SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 334

THE UNITED STATES OF AMERICA, APPELLANT

vs.

SHORELINE COOPERATIVE APARTMENTS, INC., A CORPORATION; J. M. NICHOLSON, ROBERT R. LUMSDEN, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

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2 In the United States District Court for the Northern District of Illinois, Eastern Division

No. 48–C–1023

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, FOR AND ON BEHALF OF THE UNITED STATES, PLAINTIFF

v.

SHORELINE COOPERATIVE APARTMENTS, INC., A CORPORATION; J. M. NICHOLSON, ROBERT R. LUMSDEN, CHARLES W. ZERLER, NATHAN SUCHERMAN, SAMUEL SHRAYER, MILTON TINSLEY, FRANK FERRARO, HELEN FERRARO, JOHN J. CHALMERS, DEFENDANTS

Be it remembered, that on to wit, the 14th day of July 1948, the above-entitled action was commenced by the filing of a Complaint in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action No. 48–C–1023

UNITED STATES OF AMERICA, PLAINTIFF

v.

SHORELINE COOPERATIVE APARTMENTS, INC., A CORPORATION; J. M. NICHOLSON, ROBERT R. LUMSDEN, NATHAN SUCHERMAN, MILTON TINSLEY, FRANK FERRARO, HELEN FERRARO, JOHN J. CHALMERS, SAMUEL SILVERMAN, ARTHUR J. CASEY, MAURICE LIPKIN, CHARLES E. KOCH, CHARLES H. BRANDT, CLIFFORD CULLODEN, JEROME A. CUTLER, HARRY TARLER, EUGENE B. FEINGOLD, HERBERT S. KOHN, AND IRVING KALLICK, DEFENDANTS

Supplemental complaint

Filed June 23, 1949

Now comes Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, for and on behalf of the United States, and for supplemental complaint herein, filed and served pursuant to leave granted by the order of this court on the — day of —— 1949, alleges:

(1) Supplemental Plaintiff (hereinafter referred to in this supplemental complaint as "Plaintiff"), is the United States of

America and invokes the jurisdiction of this Court under subsection (b) and (c) of Section 206 of the Housing and Rent Act of 1947, as amended, 50 U. S. C. App., Secs. 1881 et seq., Public Law 31, 81st Congress, 1st Session), hereinafter referred to as the "Act."

(2) Tighe E. Woods is the duly appointed, qualified and acting Housing Expediter of the Office of the Housing Expediter, and in his judgment, the defendants have engaged in, or are about to engage in, acts and practices hereinafter more particularly alleged, which constitute, or will constitute, a violation of Section 206 (a) of the Act and of other provisions of the Act applicable in the premises.

5 (3) At all times mentioned herein, on and after July 1, 1947, there has been, and is now, continuously in full force and effect, issued pursuant to Section 204 (d) of the Act, a Rent Regulation for Controlled Housing, as amended, hereinafter referred to as the "Controlled Regulation," which duly fixed and prescribed the lawful maximum rents for the use or occupancy of housing accommodations or rooms in the Chicago Defense-Rental Area.

(4) The acts or transactions constituting the violations herein more particularly alleged, or parts thereof, occurred within the district whereof this Court has jurisdiction.

(5) The defendant, Shoreline Cooperative Apartments, Inc., a corporation organized and existing under the laws of the State of Illinois, was at all times material hereto, the owner, operator and manager of premises situated at 2231 East 67th Street, Chicago, Illinois. The said premises are located within the defense-rental area of Chicago, which is so designated by the Controlled Regulation issued under the Act. Said premises contain dwelling units which constitute controlled housing accommodations within the meaning of the Act and the Regulations issued thereunder.

(6) At all times material hereto, said housing accommodations have been, and are now, let and rented out to various tenants for dwelling units.

(7) At all times material hereto, the defendant, Shoreline Cooperative Apartments Inc., in the operation and management of the premises, has been, and is now, under the Act and Controlled Regulation, entitled to receive rentals for the aforesaid housing accommodations; that the aforesaid defendant has been, and is now, demanding, collecting and receiving rents from the tenants in said premises for the use and occupancy of the housing accommodations in said premises.

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(8) The Housing and Rent Act of 1947, as amended, was amended by the Housing and Rent Act of 1949 (Public Law 31, 81st Congress, 1st Session), and Section 209 of the Housing and Rent Act of 1949 provides as follows, to wit:

6 "EVICTION OF TENANTS

"SEC. 209. Whenever in the judgment of the Housing Expediter such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result in rent increases inconsistent with the purposes of this Act."

(9) Pursuant to the authority granted the Housing Expediter in the aforesaid Section 209, the Controlled Regulation was amended by Amendment 77 (14 F. R. 1570 et seq.) effective April 1, 1949. Said Amendment 77 added Section 825.6 to the Controlled Regulation, which said Section, insofar as pertinent hereto, provides as follows:

"SEC. 825.6. Removal of tenant (a) Restrictions on removal of tenant.—So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for surrender or possession, or for entry of judgment upon the tenant's confession for breach of the covenants thereof, of which otherwise provides contrary hereto, except on one or more of the grounds specified in this paragraph (a), or unless the landlord has obtained a certificate in accordance with paragraph (c) of this section: Provided, however, That no provisions of this section shall be construed to authorize the removal of a tenant unless such removal is authorized under local law.

* * * * *

"(c) Eviction certificate: grounds for issuance.—No tenant shall be removed or evicted on grounds other than those stated in paragraph (a) of this section, unless on petition of the landlord the

Housing Expediter certifies that the landlord may pursue his remedies in accordance with the requirements of local law. The certificate shall authorize the pursuit of local remedies at the expiration of the waiting period specified in paragraph (d) of this section. The Expediter shall so certify if he finds that removals or evictions of the character proposed are not inconsistent with the purposes of the act or this regulation and would not be likely to result in the circumvention or evasion thereof. The Expediter shall so find in the following cases:

7 "(1) Occupancy by owner.—Where the landlord, who is the owner of the housing accommodations, establishes that he seeks in good faith to recover possession thereof for his immediate and personal use and occupancy as housing accommodations, or for the immediate and personal use and occupancy as housing accommodations by a member or members of his immediate family (see definition of 'immediate family' at the end of this subparagraph (1)): Provided, however, That:

* * * * *

"(b) In the case of housing accommodations in a structure or premises owned by a cooperative corporation or association, no certificate shall be issued by the Expediter to a purchaser of stock or other evidence of interest in such cooperative, who is entitled by reason of such ownership of stock or other evidence of interest to possession of such housing accommodations by virtue of a proprietary lease or otherwise, unless stock or other evidence of interest in the cooperative has been purchased by persons who are tenants in occupancy of at least 65 percent of the housing accommodations in the structure or premises and are entitled by reason of such ownership to proprietary leases of housing accommodations in the structure or premises;"

(10) Section 825.6 (h) of the aforesaid Regulation, as amended by Amendment 85 (14 F. R. —), duly issued by the Housing Expediter, and effective on April 15, 1949, provides as follows:

"(2) The provisions of this section shall not apply to any case in which judgment was entered prior to April 1, 1949, by a court of competent jurisdiction for the eviction or removal of a tenant from housing accommodations: Provided, however, That the provisions of this section shall apply unless said judgment was obtained in accordance with the provisions of the Housing and Rent Act of 1947, as amended by the Housing and Rent Act of 1948."

(11) The defendant, Shoreline Cooperative Apartments, Inc., a corporation, is, and was, at all times material hereto, a cooperative corporation or association within the meaning and intent of the

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aforesaid Section 825.6 (c) (1) (b) of the Controlled Regulation, as amended. The following named defendants are the purchasers of stock or other evidence of interest in the cooperative corporation, or have entered into contracts for the purchase of such stock or interest in said cooperative corporation; and plaintiff is informed and believes, and so states the fact to be, that said purchasers of stock are entitled, by reason of said ownership in the stock, to proprietary leases of certain of the housing accommodations involved herein:

8

Samuel Silverman.
Arthur Casey.
Maurice Lipkin.
Charles E. Kock.
Charles H. Brandt.
Clifford Culloden.
Jerome A. Cutler.
Milton Tinsley.
Harry Tarler.
Eugene B. Feingold.
Herbert S. Kohn.
Irving Kallick.
Nathan Sucherman.
J. M. Nicholson.
Robert R. Lumsden.
John J. Chalmers.
Frank Ferraro.
Helen Ferraro.

hereinafter referred to as the "Other Defendants."

(12) Plaintiff alleges that there are persons in occupancy of the housing accommodations herein involved who have also purchased, or contracted to purchase, stock or other evidence of interest in said defendant cooperative corporation, but that said persons occupy less than 65 percent of the housing accommodations located in the premises herein involved.

(13) Plaintiff further alleges that in violation of Section 825.6 (c) (1) (b) and 825.6 (h) of the Controlled Regulation, the defendant cooperative corporation and the Other Defendants have instituted proceedings, or taken other action, for the purposes of removing or evicting the tenants from the said housing accommodations without first having obtained from the Housing Expediter a certificate authorizing the pursuit of local remedies for said eviction purposes in accordance with the terms and provisions of the aforesaid Sections of the Controlled Regulation; that plaintiff is informed and believes, and so states the fact to be, that the Other Defendants have actions pending in the Municipal Court of Chicago for the purpose of evicting or removing the said tenants, or have instituted other proceedings for said purposes, and unless restrained and enjoined herein, will proceed to remove or evict the said tenants without having obtained the necessary certificate as aforesaid; that the numbers of the housing accommodations in the premises, the names of the

tenants occupying the same and the names of the Other Defendants seeking possession as aforesaid are as follows:

Apt. No.	Name of tenant in possession	Name of other defendant seeking possession
7A	Irving S. Bickson	Nathan Sucherman.
13B	Stella Counselbaum	J. M. Nicholson.
12A	Harold Shilling	Robert R. Lumsden.
6B	Isadore H. Besser	Charles H. Brandt.
4B	J. J. Cavanagh	Charles E. Koch.
6C	Mrs. Harry A. Dober	John J. Chalmers.
7D	Milton M. Friedman	Harry Tarler.
11C	R. H. Keeling	Frank and Helen Ferraro.
8D	Bertha Levy	Eugene B. Feingold.
9A	W. P. Littell	Arthur J. Casey.
9C	Mrs. Frank McCool	Jerome Cutler.
7C	Mrs. James Neidlinger	Clifford Culloden.
5D	Mrs. James Nolan	Milton Tinsley.
9D	Harry Stillman	Herbert S. Kohn.
3B	Lillian M. Swing	Maurice Lipkin.
4A	James W. Watson	Samuel Silverman.
13D	B. R. Hopper	Irving Kallick.

(14) Plaintiff alleged that unless restrained and enjoined, the defendant, Shoreline Cooperative Apartments, Inc., and the Other Defendants, will proceed in their attempt to evict and remove the tenant-occupants from the aforesaid premises, and may succeed in effecting the removal of the said tenants in occupancy of the said premises, all contrary to the provisions of the Act and Sections 825.6 (c) (1) (b) and 825.6 (h) of the Controlled Regulation.

(15) The action of all of the defendants herein, and each of them, in the respects aforesaid, if continued, will succeed in unlawfully effecting the removal of the actual tenants and each of them from their apartments and thereby deprive them and each of them of their rights and protection under the Act and the Controlled Regulation issued thereunder. The plan and device followed in such course, moreover, will, if allowed to become widespread, seriously undermine, if not wholly nullify, the emergency policy and intent of Congress manifest in the aforesaid statute to prevent overcharges in rent and to protect and continue all tenants in their use or occupancy of dwelling premises for such time as the maximum rentals lawfully determined therefor are paid or tendered to the persons entitled thereto.

(16) Plaintiff, in view of defendants' past conduct, believes and alleges that unless restrained and *enjointed*, defendants will operate, and continue to operate the said housing accommodations in violation of said Act and the Controlled Regulation as aforesaid, and in other respects, all to the prejudice of the public welfare.

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10 Wherefore, plaintiff prays:

(1) A preliminary and final injunction enjoining the defendants, and each of them, their agents, servants, employees, attorneys, and all persons in active concert or participation with defendants, from:

(a) Removing, or evicting, or attempting to remove or evict, any tenant from the housing accommodations in the premises hereinbefore described, upon any ground, or for any other purpose not expressly permitted by the Housing and Rent Act of 1947, as amended, or by the Controlled Housing Rent Regulation, as amended issued pursuant thereto, or as hereafter amended or extended, in such cases made and provided.

(b) Engaging in any action or course of action, the purpose of which is to evict illegally tenants from the above-described premises or any other housing accommodations owned, controlled or managed by the defendants, or each of them, or from evicting said tenants in any form or manner, contrary to the Housing and Rent Act of 1947, as amended, and the Regulations issued thereunder, as heretofore or hereafter amended or superseded.

(c) Proceeding with prosecuting, continuing, or causing to be continued, or taking any steps whatsoever, either directly or indirectly, any civil actions or proceedings brought by the said defendants, for the purpose of removing or evicting the tenants in occupancy of the premises herein involved.

(d) Committing any violation of the above Act or the Regulation issued thereunder, as heretofore or hereafter amended, extended, or superseded.

(2) Judgment for the Plaintiff in behalf of the United States in the amount of the costs of this action.

(3) And for such other relief as the Court may find necessary and appropriate to effectuate the purposes of the Housing and Rent Act of 1947, as amended, or to which the plaintiff may be entitled.

UNITED STATES OF AMERICA,

11 By William S. Kaplan,

WILLIAM S. KAPLAN,

Attorney, Office of Housing Expediter,

Attorney for Plaintiff.

[*Duly sworn to by William S. Kaplan; jurat omitted in printing.*]

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13 In the United States District Court

[Title omitted.]

Motion of defendant, Shoreline Cooperative Apartments, Inc., and all divers third party defendants to dismiss the supplemental complaint of plaintiff

Filed June 24, 1949

Now comes defendants, Shoreline Cooperative Apartments, Inc., a corporation, and third party defendants, Samuel Silverman, Samuel Schrager, Arthur J. Casey, Maurice Lipkin, Charles E. Koch, Charles H. Brandt, Clifford Culloden, Jerome A. Cutler, Milton Tinsley, Harry Tarler, Eugene B. Feingold, Herbert S. Kohn, and Irving Kallick, and each of them by Mayer Goldberg and Leonard L. Levin, their attorneys, and move the court to dismiss the supplemental complaint herein for the following reasons:

14 1. Said supplemental complaint and the original complaint herein failed to state a claim upon which relief can be granted.

2. The statute described in paragraph 8 of said supplemental complaint (Section 209 of Housing and Rent Act of 1949) is void because it violates the rights of each of third party defendants as established and granted by Section 1 of Article I and Paragraph 18 of Section 8 of Article I of the Constitution of the United States of America.

Shoreline Cooperative Apartments, Inc., Samuel Silverman, Samuel Schrager, Arthur J. Casey, Maurice Lipkin, Charles E. Koch, Charles H. Brandt, Clifford Culloden, Jerome A. Cutler, Milton Tinsley, Harry Tarler, Eugene B. Feingold, Herbert S. Kohn, and Irving Kallick, third party defendants, by Mayer Goldberg, Leonard L. Levin, Attorneys for said defendant and third party defendants, 33 North La Salle, STate 2-5397.

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16 In the United States District Court

[Title omitted.]

Motion of defendant, Robert R. Lumsden, to dismiss the supplemental complaint of plaintiff

Filed July 5, 1949

Now comes defendant Robert R. Lumsden, by Kenart M. Rahn, his attorney, and moves the court to dismiss the supplemental complaint herein for the following reasons:

1. Said supplemental complaint and the original complaint herein failed to state a claim upon which relief can be granted.

2. The statute described in paragraph 8 of said supplemental complaint (The Housing and Rent Act of 1949) is void because it violates the rights of the said defendant as established and granted by Section 1 of Article I and Section 8 of Article I of the Constitution of the United States of America.

ROBERT R. LUMSDEN,
By KENART M. RAHN,
Attorney for said defendant and cross-claimant, 7 South Dearborn Street, FRA 2 4996.

17 In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action No. 48–C–1023

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, FOR AND ON BEHALF OF THE UNITED STATES, PLAINTIFF

v.

SHORELINE COOPERATIVE APARTMENTS INC., A CORPORATION, J. M. NICHOLSON, ROBERT R. LUMSDEN, CHARLES L. ZERLINER, NATHAN SUCHERMAN, SAMUEL SHRAYER, MILTON TINSLEY, FRANK FERRARO, HELEN FERRARO AND JOHN J. CHALMERS, DEFENDANTS

Opinion

The precise question for decision in this case is the validity of the Housing and Rent Act of 1949 because the only basis or reason for claiming jurisdiction in this Court is founded upon that Act. If the Act is constitutional and valid, I have jurisdiction to proceed and determine the issues in question. If the Act is not constitutional I have no power to proceed further. An unconstitutional Act is void at all times and for all purposes, and because

jurisdiction can neither be conferred nor waived by consent of the parties it is a question that may be raised at any time in any court. It would be inadvisable for me to proceed further without deciding that basic question, and reluctant as I am to assume so grave a responsibility I must do so.

By bench announcement at the conclusion of the arguments, and after consideration of the original briefs, I have made it clear that I consider the local option provisions of the present Act to be unconstitutional and void (Sec. 204j, 1, 2 and 3). I shall presently express my reasons for so holding. At that time I stated that I would consider the further question as to whether or not the invalidity of those provisions rendered the entire Act void and would announce my final conclusions in a written opinion. Since that time the parties have filed additional briefs and at my request have submitted to me all those portions of the Congressional Record appearing to be pertinent to the subject, with various passages marked by counsel. I have considered all of these, together with the additional briefs, and after much study and thought am now ready to give my final decision.

Specifically, as to the so-called "local option" provisions, I have never entertained any doubt after reading the original briefs and reading the provisions themselves. No contention has been presented by any counsel in this suit, nor as far as I can learn in the halls of Congress, that this Act is based upon anything except the war powers of Congress, and frequent references to the Congressional Record indicate that those war powers were hardly ever mentioned in debate or reports of committees. The entire theory of Congress is that it is desirable to continue rent controls for a limited time, but in the preamble to the Act it is first stated and most definitely stressed that it is desirable to be through with those controls as rapidly as possible, and the debates of Congress, as well as the preamble to the Act in question, have reference to the economic aftermath of war—none of them to continuation of hostilities nor any reference to the successful prosecution of war. In this opinion I am definitely refusing to consider any facts, although it is obvious to everyone that these rent controls are continued for economic reasons only and that they have no real reference to the prosecution of any war anywhere. Since we have signed no treaties of peace, I assume that we are still at war and that Congress still possesses full war powers. The only question is whether or not the present Act is within the power granted to Congress to declare war, and the implied power to take any act or pass any law to carry that power of declaration into full force and effect. In short, I am assuming that Congress still has the power to enact a valid Rent Control Act.

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This brings into immediate focus the question of whether the Act under consideration is within those powers. Inasmuch as this law was only passed a few months ago, and there has been no opportunity for its interpretation by our highest court, I am forced to consider previous decisions on previous Acts and from there to proceed as with any other case of first impression.

Perhaps it is well to start this way. Our United States Supreme Court and the Supreme Courts of many States have many times pointed out that a frequent recurrence to fundamental principle is necessary to the maintenance of our constitutional form of government and this is especially true when legislation is passed under the war powers, because they are invariably brought forth under the fervor of patriotism and the all-prevailing desire of Congress and the Court to aid and not impede the ultimate victory which everyone desires. It has been true after every war and is true after the most recent one that the fundamental principles of the Constitution are likely to be invaded, and unless from time to time we revert to those principles we may eventually find that the liberties of the people and the limitations of the Constitution have been seriously eroded if not completely impaired.

I start with the fundamental principle that Congress has only such powers as are given to it by the Constitution or necessarily implied therefrom to carry those powers into effect, and with the second fundamental principle which is also expressed in the Constitution that all powers not therein expressly given to Congress or prohibited to the States are expressly reserved to the States and to the people. It is also necessary to consider that further constitutional provision that no State shall pass any law impairing the obligation of contract. The present controversy involves all of these provisions.

I am aware of the holdings in Block v. Hirsh, 256 U. S. 135, and Marcus Brown Holding Company vs. Marcus Feldman, 256 U. S. 170, and it may be that under those two decisions the provisions of the Constitution prohibiting any State to pass any law impairing the obligation of contract has itself materially been impaired. These cases, however, concerned the police power of Congress in the District of Columbia and the State Legislature of New York. It would be inappropriate and unjudicial of me to utter any criticism of any decision of the United States Supreme Court. It must be pointed out, however, that it is generally conceded that outside of the District of Columbia and with other exceptions not necessary to be noted here the Congress possesses no police power (11 Am. Juris. Sec. 255), and since the case can be decided without reference to that particular point, I will pass on it.

As above indicated, I have assumed, and throughout this opinion do assume, that the war powers of Congress still exist, but it becomes instantly necessary to consider whether or not these war powers may be delegated to States, municipalities, or other subdivisions of Government. It will be noted on reading the local option provisions of this Act that no standards are set up either for the determination of basic facts or rules for guidance of the State, municipalities, or other political subdivisions, in determining whether or not they shall remain under rent control. As far as Congress is concerned it has attempted to leave the matter entirely open to arbitrary determination by each State or other subdivision to decide for itself whether or not it wants or needs rent control, and this entirely without rules or guide posts of any kind as to whether or not such rent control may be necessary in connection with the prosecution or maintenance of the war effort.

Thus, in paragraph (j), (1), it provides that whenever the Governor of any State advises the Housing Expediter that the Legislature of such State has adequately provided for the establishment and maintenance of maximum rents or has specifically expressed its intent that State rent control shall be in lieu of Federal rent control, with respect to housing accommodations within defense-rental areas in such State, etc., all Federal control shall cease. If it were not for the cases of Block v. Hirsh, and Marcus Brown Holding Co. v. Feldman, supra, there could be little doubt that no State would have any power to establish rental controls at all, and even with those two cases in the books it is still doubtful if such power exists in any State except under some emergency exercise of police power. Certainly, no State could exercise any portion of the war power. No definition is given as to what a State must do adequately to provide for the maintenance of maximum rents. There is no guide as to what constitutes sufficient housing or what should constitute maximum rents. The effect is to leave that question to the arbitrary action of any State.

Section (j) (2) is even broader and more loose in its provisions for discarding Federal rent control. That section merely provides that if any State (without reference to any war effort or without reference to any reason or limitation on its action) declares that Federal rent control is no longer necessary in such State, or any part thereof, all controls shall be immediately dissolved. It is up to the Legislature to act reasonably or whimsically as it may see fit entirely without reference to any war effort.

Section (j) (3) provides for decontrol under even more lax conditions in any incorporated city, town or village, merely upon receipt of a resolution of its governing body adopted for that

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purpose in accordance with applicable local law based upon a finding by such governing body reached as the result of public hearing held after ten days' notice that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village, provided that such resolution is first approved by the Governor of the State before being transmitted to the Housing Expediter.

No standard is laid down as to what is or what is not a shortage of rental housing accommodations, nor is there any provision as to the procedure for or findings at a public hearing or how that public hearing is to reach any conclusion upon the question of whether or not rent control is no longer necessary or desirable. Upon the general theory that there are more tenants than landlords this provision would certainly be an undemocratic and unconstitutional way of determining whether or not rents should be controlled and limitations thus kept upon the rights of citizens freely to contract.

Acts of this kind have many times been declared unconstitutional. As near as I can determine from the decided cases it is not only permissible but necessary that power be delegated to administrative officers or agencies to determine the facts and apply the law to the facts as thus determined. Illustrations of this are too numerous to mention, such as the first and second war power acts, as well as many others, but this is the first case that has come to my attention in which Congress has attempted to leave it to other legislative bodies arbitrarily to determine whether or not they would be within or without the union so far as an Act of Congress is concerned—an Act which must depend upon the war power if it has any foundation at all. I can see no difference between this situation and one in which Congress should pass a selective service law with the provision that any State which doesn't care to send soldiers may pass a law and say they did not choose to be involved, or an Interstate Commerce Act with the provision that any State that chose not to be governed thereby could declare itself out. I can see no reasonable reason to believe that an Act of Congress under its war powers can contain any such provisions as might make it inoperative at the option of any or all of the various states or subdivisions of States, by their arbitrary action and without guides, standards or specifications of facts.

This is not intended to indicate any doubt on my part that war powers may operate with inequality as among different States or portions of States if those inequalities necessarily result from substantial facts determined by lawful authority. Thus, I can see no objection to a Rent Control Act which is made applicable to

various parts of the country depending on different states of facts and different conditions and necessities for carrying on the war, provided there is a pattern to follow and proper executive or administrative means laid out for its apportionment. Thus, when the Rent Control Act was passed it was recognized that there were vital defense areas in which controls must be exercised and these were to be determined by duly authorized administrators. Thousands of other executive orders of the first and second war powers Act were likewise delegated to administrators to determine the facts and to apply the law as the facts might warrant. The vice of the present law lies in its capriciousness, inequality of application, and total lack of any relationship between the carrying on of the war and the application of the law. It amounts to an abrogation of the power of Congress. Two or three States have already declared themselves out, thus repealing the war efforts so far as those States are concerned, and if the other States should see fit to do likewise the Act of Congress would be utterly repealed or completely emasculated without any further act of its own and without regard to any power to make or maintain war.

In the case of Woods v. Miller, 333 U. S. 138, which is relied upon by the plaintiff, the Housing Act of 1947 is sustained as against an attack based upon unlawful delegation of the powers of Congress. However, that Act, as this one, contains the provision:

"The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect in any defense rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met."

Under this provision of the law the Supreme Court in the Woods case, speaking through Mr. Justice Douglas, said:

"Under the present Act the Housing Expediter is authorized to remove the rent controls in any defense-rental area *if in his judgment the need no longer exists by reason of new construction or satisfaction of demand in other ways.* [*Italics supplied.*] The powers thus delegated are far less extensive than those sustained in Bowles vs. Willingham. (321 U. S. 503) Nor is there here a grant of unbirdled administrative discretion. The standards prescribed passed muster under our decisions."

The vice of the present Act lies in the very fact that no authorized person is required to use any judgment and there is a grant of unbridled administrative discretion subject neither to reason nor findings of fact. This delegation of power is not to an administrator whose selection is controlled by Congress but to

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States, municipalities, other subdivisions or town meetings. The case is no authority for the position taken by the plaintiff but rather to the contrary.

It is a grave and serious matter for any Judge or group of Judges to hold an Act of Congress to be unconstitutional. Nevertheless, it must sometimes be done. It was the intention of the framers of our Constitution that Federal Judges should be removed from politics and free from the popular clamor of transitory ideas and it was their intention that the Constitution should be a charter definitely and firmly fixed and to remain forever the the law of the land unless and until it might be amended as therein provided. As Judges, our oath is not to support either the legislative or executive branches of Government, but only to support the Constitution. Unless we adhere firmly to this oath and fearlessly perform our duties as we see them, and to the best of our ability, it will be found some day that the liberties of the people have been eroded and such fundamental principles as the right to private property and freely to contract with respect thereto have been lost. In this connection I am considerably impressed by the language of Mr. Justice Jackson in his special concurrence in the Woods case:

"No one will question that this (war) power is the most dangerous one to free government in the whole catalogue of powers. It usually is invoked in haste and excitement when calm legislative consideration of constitutional limitation is difficult. It is executed in a time of patriotic fervor that makes moderation unpopular. And, worst of all, it is interpreted by Judges under the influence of the same passions and pressures. * * *

"Particularly when the war power is invoked to do things to the liberties of people, or to their property or economy that only indirectly affect conduct of the war and do not relate to the management of the war itself, the constitutional basis should be scrutinized with care. * * *

"I cannot accept the argument that war powers last as long as the effects and consequences of war, for if so they are permanent—as permanent as the war debts."

It is for these reasons that I have held the local option clauses to be invalid. There remains for consideration the question of whether or not the invalidity of these clauses invalidates the entire Act. That question in turn depends upon a construction of the saving clause (Sec. 305), and the interpretation of this clause must depend upon the intention of Congress as expressed in the preamble of the Act, indicated by the debates of Congress and whether or not it is the intention of Congress that the remaining portions of the Act should prevail with the major portion of its intent expressed in the preamble removed from the Act.

Preamble to the Act of 1949 is to be found in Sections 201 (a) and (b) of the Act of 1947 which are carried forward into the Act of 1949. This preamble declares the policy of Congress under the heading "Declaration of Policy" in the following language.

"(a) The Congress hereby reaffirms the declaration in the Price Control Extension Act of 1946 that unnecessary or unduly prolonged controls over rents would be inconsistent with the return to a peacetime economy and would tend to prevent the attainment of the goals therein declared.

"(b) The Congress therefore declares that it is its purpose to terminate at the earliest practicable date all Federal restrictions on rents on housing accommodations. At the same time the Congress recognizes that an emergency exists and that, for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period, as well as the attainment of other salutary objectives of the above-named Act, it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in defense-rental areas. Such restrictions should be administered with a view to prompt adjustments where owners of rental housing accommodations are suffering hardships because of the inadequacies of the maximum rents applicable to their housing accommodations, and under procedures designed to minimize delay in the granting of necessary adjustments, which, so far as practicable, shall be made by local boards with a minimum of control by any central agency.

"(c) To the end that these policies may be effectively carried out with the least possible impact on the economy pending complete decontrol, the provisions of this title are enacted."

It is clear from a reading of this preamble, which is called a declaration of policy, that the principal object had in mind was to end that control, which it considered no longer desirable and to do so with the least possible impact upon the general economy. It is to be noted that no reference is made to a continuation of the war effort nor is there any definition of defense rental areas except as they had previously been determined by the Housing Expediter.

The principal argument for the plaintiff is based upon Section 305 of the present Act, which is as follows:

"If any provision of this Act or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of the Act, and the applicability of such provision to other persons or circumstances shall not be affected thereby."

It will be noted in considering this Section that the word is "provision," not the plural "provisions."

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It is also to be noted that the reference "to any person or circumstance" is a customary clause added to many statutes by both State and Federal Governments intended to prevent the failure of the entire Act through the failure of some inconsequential portion thereof. A provision such as this is sometimes valid and sometimes invalid and it is a matter of judicial interpretation as to whether a saving clause of this kind can save an entire Act if the very essence and purpose of it is unconstitutional.

The debates of Congress are helpful although not controlling. A study of those debates indicates that very little thought was given to the question of constitutionality. Senators Bricker and Wiley exchanged some views on this point and some slight reference was made to it in the House, but practically all of the remarks in Congress, so far as they have been called to my attention, were directed to the economic problem of housing with no reference at all that I can find as to the necessity of this Act for the maintenance of a state of war. I must, therefore, place principal reliance on the preamble of the Act and Congress's own declaration of policy. As Congress itself stated, the principal object of the Act was to secure decontrol at the earliest possible moment and with the least possible impact upon the general economy and it is entirely clear from all the sources available, including the debates in Congress, that the Act could never have passed without the local option provisions. They were the means principally relied upon as a way of returning the Government to the States and subdivisions immediately. Without these provisions there would be no way of decontrolling an area except through the powers given the administrator, and it is entirely clear from the local option provisions themselves that Congress did not consider those administrative means as adequate for accomplishing its declared purpose. Section 305 shows only an intention of congress that if some single provision of the Act as applied to some particular circumstance should be held unconstitutional it should not affect the remainder of the Act. Congress did not say nor could it say that if the most vital portions of the Act were invalid the remaining fragments should prevail. It is my opinion that the unconstitutional portions of this Act, if considered with its preamble, greatly outweigh all of the other provisions for decontrol.

This view of the case in my opinion is fully sustained by the majority opinion in Carter v. Carter Coal Co., 298 U. S. 238. The saving clause in that case was identical with the saving clause in this one, and everything that was said in the majority opinion in that case, beginning on page 312, is applicable to the case now under consideration. There is little point in my repeating it here because I consider myself bound by it and firmly believe it

to be sound law. It is written in accordance with the general rule of frequent application that if the valid and invalid parts of a law are so bound together that the invalid part is a material inducement to the valid portion then the whole is necessarily invalid. I believe that is the situation in this case.

There is one more reason for holding this law indivisible and I think it is a conclusive one—one that closes the door on the argument. Had the Congress desired and intended to continue rent control without these local option clauses it could have done so by a simple Act extending the expiration date of the then existing law.

It follows that I must necessarily find the entire Act invalid and being invalid this Court has no jurisdiction. The judgment will, therefore, be that the cause now is dismissed for want of jurisdiction.

(S) ELWYN R. SHAW,
United States District Judge.

18 In the United States District Court for the Northern District of Illinois, Eastern Division

Civil Action No. 48–C–1023

UNITED STATES OF AMERICA

v.

SHORELINE COOPERATIVE APARTMENTS, INC., A CORPORATION, J. M. NICHOLSON, ROBERT R. LUMSDEN, NATHAN SUCHERMAN, MILTON TINSLEY, FRANK FERRARO, HELEN FERRARO, JOHN J. CHALMERS, SAMUEL SILVERMAN, ARTHUR J. CASEY, MAURICE LIPKIN, CHARLES E. KOCH, CHARLES H. BRANDT, CLIFFORD CULLODEN, JEROME A. CUTLER, HARRY TARLER, EUGENE B. FEINGOLD, HERBERT S. KOHN, AND IRVING KALLICK

SHORELINE COOPERATIVE APARTMENTS, INC., A CORPORATION, THIRD PARTY PLAINTIFF

v.

JAMES W. WATSON, WASHBURN S. LYON, WILLIAM P. LITTELL, HAROLD SHILLING, LILLIAN SWING, J. J. CAVANAGH, ISADORE H. BESSER, STELLA COUNSELBAUM, JOSEPH NEIDLINGER, MRS. FRANK S. MCCOOL, R. H. KEELING, JAMES F. NOLAN, HARRY A. DOBER, MILTON M. FRIEDMAN, BERTHA LEVY, HAROLD L. STILLMAN, FRANK D. WARNER, B. R. HOPPER, SAMUEL SILVERMAN, ARTHUR CASEY, MAURICE LIPKIN, CHARLES E. KOCH, CHARLES H. BRANDT, CLIFFORD CULLODEN, JEROME A. CUTLER, HARRY TARLER, EUGENE B. FEINGOLD, HERBERT S. KOHN, IRVING KALLICK, AND MORRIS LEVENKIND, THIRD PARTY DEFENDANTS

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Judgment

July 26, 1949

After due deliberation and the Court being fully advised in the premises, files herein its memorandum opinion in accordance with which it

Ordered that this cause be and it is hereby dismissed for want of jurisdiction.

20 In the United States District Court

[Title omitted.]

Petition for appeal

Filed August 23, 1949

United States of America, plaintiff herein, considering itself aggrieved by the final judgment of the Court entered herein on July 26, 1949, for the reasons set forth in its assignment of errors which is filed herewith, hereby prays an appeal from said judgment to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court plaintiff presents to this Court herewith a statement particularly disclosing the basis of jurisdiction of the Supreme Court to entertain an appeal and review said final judgment in question.

Plaintiff prays that this appeal may be allowed and that citation be issued as provided by law, and that a transcript of the
21 record, proceedings, and documents upon which said final judgment was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

Filed at Chicago, Illinois, this 23d day of August 1949.

Ed Dupree,
ED DUPREE,
General Counsel,
Cecil H. Lichliter,
CECIL H. LICHLITER,
Special Litigation Attorney,
Office of the Housing Expediter, Washington 25, D. C.,
William S. Kaplan,
WILLIAM S. KAPLAN,
Chief, Litigation Section,
Office of the Housing Expediter, 226 West Jackson Boulevard, Chicago 6, Illinois,
Attorneys for Plaintiff.

22 In the United States District Court

[Title omitted.]

Assignment of errors

Filed August 23, 1949

United States of America, plaintiff in the above-entitled cause, files the following assignments of error on which it will rely upon appeal to the Supreme Court of the United States from the final judgment of this Court entered on the 26th day of July 1949:

The Court below erred:

1. In holding Section 204 (j) and the several subsections thereof, of the Housing and Rent Act of 1949 (Public Law 31, 81st Congress) to be unconstitutional and void as an unlawful delegation of the war powers of Congress.

2. In holding the entire Housing and Rent Act of 1949 to be invalid because of the inclusion therein of said Section 204 (j).

23 3. In failing to give effect to the separability clause of the said Act, Section 305 thereof, which renders said Section 204 (j) separate and divisible from the remaining provisions.

4. In dismissing the cause for lack of jurisdiction upon the finding that the entire Housing and Rent Act of 1949 is invalid.

Wherefore, plaintiff prays that the said judgment of the District Court dismissing the cause be reversed, and that the cause remanded for entry of a decree granting the relief as the supplemental complaint prayed.

Filed at Chicago, Illinois, this 23d day of August 1949.

Ed Dupree,
Ed Dupree,
General Counsel,
Cecil H. Lichliter,
Cecil H. Lichliter,
Special Litigation Attorney,
Office of the Housing Expediter, Washington 25, D. C.,
William S. Kaplan,
William S. Kaplan,
Chief, Litigation Section,
Office of the Housing Expediter, 226 West Jackson Boulevard, Chicago 6, Illinois,
Attorneys for Plaintiff.

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25-70 In the United States District Court

[Title omitted.]

Order allowing appeal

August 23, 1949

It appearing to the Court that the plaintiff, United States of America, has filed herein a petition for appeal to the Supreme Court of the United States, together with an assignment of errors praying for a reversal of the judgment entered July 26, 1949, dismissing the within action, and also a statement as required by Rule 12 of the Supreme Court Rules, disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question,

It is ordered that the appeal prayed for be, and the same is, hereby allowed and granted to the Supreme Court of the
71 United States from the judgment rendered in this cause as aforesaid.

It is further ordered that plaintiff be, and it is, hereby allowed a period of 60 days from the date of this order within which to appeal and docket said appeal in the Supreme Court of the United States.

Dated at Chicago, Illinois, this 23d day of August 1949.

PHILIP L. SULLIVAN,
Judge of the District Court of the United States, for the Northern District of Illinois, Eastern Division.

73 In the United States District Court

[Title omitted.]

Praecipe for record on appeal

Filed August 23, 1949

To the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division:

You are hereby requested to prepare a transcript of record in the above-entitled cause to be filed in the Supreme Court of the United States, pursuant to an appeal allowed herein, and to include in such transcript the following:

1. Supplemental complaint in name of United States of America filed by leave of Court June 23, 1949.

2. Motion of defendant Robert R. Lunsden to dismiss supplemental complaint.

3. Motion of defendant Shoreline Cooperative Apartments, Inc., and third party defendant Samuel Silverman, et al., to dismiss supplemental complaint.

4. Opinion of Honorable Elwyn R. Shaw, District Judge, filed July 25, 1949.

5. Judgment entered July 26, 1949, dismissing the action.

6. Petition for appeal.

7. Statement of Jurisdiction.

74 7 (a). Statement Directing Attention of Defendants to Provisions of Paragraph 3, Rule 12 of the Rules of the Supreme Court of the United States.

8. Assignment of errors.

9. Order allowing appeal.

10. Citation.

11. Praecipe for record on appeal.

12. Proof of service of:

a. Petition for appeal

b. Order allowing appeal

c. Assignment of errors

d. Statement as to jurisdiction

e. Citation

f. Praecipe for transcript of record

g. Statement Directing Attention of Defendants to Provisions of Paragraph 3, Rule 12 of the Rules of the Supreme Court of the United States.

Filed at Chicago, Illinois, this 23d day of August 1949.

75 In the United States District Court

Notice of appeal

KENART M. RAHN,
7 South Dearborn Street, Chicago, Illinois (3), Attorney for Robert R. Lumsden.
STIEFEL, GREENBERG & BURNS,
77 West Washington Street, Chicago, Illinois (2), Attorneys for J. M. Nicholson, Frank Ferraro and Helen Ferraro.
MARKS & MARKS AND LEVY, GOLDBERG & LAWRENCE,
1 North LaSalle Street (2), Chicago, Illinois.
THOMAS J. CAVANAGH,
66 East South Water Street, Chicago, Illinois (1).
TURNER, HUNT & DEBOLT,
134 South LaSalle Street, Chicago, Illinois (3), Attorneys for Nathan Sucherman.

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GOLDBERG & LEVIN,
33 North LaSalle Street, Chicago (2), Illinois, Attorneys for Shoreline Cooperative, Apartments, Inc., a corporation; Milton Tinsley, John J. Chalmers, Samuel Silverman, Arthur J. Casey, Maurice Lipkin, Charles E. Koch, Charles H. Brandt, Clifford Culloden, Jerome A. Cutler, Harry Tarler, Eugene B. Feingold, Herbert S. Kohn, and Irving Kallick.

GANN, SECORD, STEAD & MCINTOSH,
135 South LaSalle Street, Chicago, Illinois (3).

You and each of you are hereby notified that on Tuesday, August 23, 1949, at the opening of court in the forenoon, or as soon thereafter as counsel can be heard, the undersigned shall appear before the Honorable Philip L. Sullivan, Judge of the District Court of the United States, for the Northern District of Illinois, Eastern Division, in his courtroom in the United States Courthouse, Chicago, Illinois, or in his absence before such other judge as may be sitting in his place and stead, and shall then and there present for filing, the petition of the plaintiff herein for direct appeal to the Supreme Court of the United States from the final judgment entered in the above cause on July 26, 1949, together with an assignment of errors and a statement as to jurisdiction, all pursuant to Rule 72 of the Federal Rules of Civil Procedure and the Rules of the Supreme Court of the United States in such cases made and provided.

You are further notified that on the day and date aforesaid and at the time designated, the undersigned shall move the above court for an order allowing the appeal to the Supreme Court of the United States from the aforesaid judgment.

You are further notified that on the day and date aforesaid and at the time and place hereinabove set forth, plaintiff
76 shall further move the court, pursuant to Section 1651 of the Judicial Code, as amended (Title 28 U. S. C. A.), Rule 36 of the Rules of the Supreme Court of the United States and Rule 62 (c) of the Federal Rules of Civil Procedure, for an injunction, restraining order, stay, or other appropriate order, to preserve the status quo of the subject cause during the pendency of the appeal herein to the Supreme Court of the United States.

Pursuant to the Rules of the Supreme Court of the United States in such cases made and provided, there is herewith served upon you copies of the above motions, etc., hereinabove set forth and more particularly described as follows:

1. Petition for Appeal from the District Court to the Supreme Court.
2. Assignment of Errors.

3. Statement as to Jurisdiction.

4. Statement directing Attention of Defendants to Provisions of Paragraph 3, Rule 12 of the Rules of the Supreme Court of the United States.

5. Order Allowing Appeal.

6. Motion of Plaintiff for an Injunction, etc., to Preserve the Status Quo of the said Cause During the Pendency of the Appeal to the Supreme Court of the United States.

7. Order Granting Injunction During the Pendency of the Appeal.

Dated at Chicago, Illinois, this 22nd day of August 1949.

Ed Dupree,
ED DUPREE,
General Counsel,
Cecil H. Lichliter,
CECIL H. LICHLITER,
Special Litigation Attorney,
Office of the Housing Expediter, Washington 25, D. C.
William S. Kaplan,
WILLIAM S. KAPLAN,
Chief, Litigation Section,
Office of the Housing Expediter, 226 West Jackson Boulevard, Chicago 6, Illinois,
Attorneys for Plaintiff.

Received a copy of the foregoing Notice together with copies of all documents therein mentioned, this 22nd day of August 1949.

TURNER, HUNT & DE BOLT.
GANN, SECORD, STEAD & MCINTOSH.
STIEFEL, GREENBERG & BURNS.
KENART M. RAHN.
MARKS AND MARKS LEVY, GOLDBERG & LAWRENCE.
GOLDBERG & LEVIN.
THOS. J. CAVANAGH.

80 [Citation in usual form showing service on Robert R. Lumsden and others omitted in printing.]

82 [Clerk's Certificate to foregoing transcript omitted in printing.]

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83 Supreme Court of the United States

No. 334, October Term, 1949

THE UNITED STATES OF AMERICA, APPELLANT

v.

SHORELINE COOPERATIVE APARTMENTS, INC., ET AL.

Order noting probable jurisdiction

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted, October 17, 1949.

Mr. Justice Douglas took no part in the consideration or decision of this question.

84 In the Supreme Court of the United States

October Term, 1949

No. 334

THE UNITED STATES OF AMERICA, APPELLANT

v.

SHORELINE COOPERATIVE APARTMENTS, INC., A CORPORATION, ET AL.

Statement of points to be relied upon and designation of record for printing

Filed October 22, 1949

Pursuant to Rule 13, paragraph 9 of this Court, the Appellant states that it intends to rely on all of the points in its Assignment of Errors.

The Appellant deems the entire record, as designated in its praecipe for transcript of record heretofore filed in the United States District Court for the Northern District of Illinois, Eastern District, necessary for the consideration of the points to be relied upon.

Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

OCTOBER 21, 1949.

[Endorsement on cover:] File No. 54083. U. S. D. C., Northern District of Illinois. Term No. 334. The United States of America, Appellant, v. Shoreline Cooperative Apartments, Inc., a corporation; J. M. Nicholson, Robert R. Lumsden, et al. Filed September 13, 1949. Term No. 334 O. T. 1949.

U. S. GOVERNMENT PRINTING OFFICE: 1949

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CHARLES ELMORE CRO
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No. 324.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

THE UNITED STATES OF AMERICA, *Appellant*,

vs.

SHORELINE COOPERATIVE APARTMENTS, INC., a corporation, *et al.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

STATEMENT AS TO JURISDICTION.

IN THE

District Court of the United States

For the Northern District of Illinois

Eastern District

UNITED STATES OF AMERICA, *Plaintiff*, v. SHORELINE COOPERATIVE APARTMENTS, INC., a corporation, J. M. NICHOLSON, ROBERT R. LUMSDEN, CHARLES W. ZERLINER, NATHAN SUCHERMAN, SAMUEL SHRAYER, MILTON TINSLEY, FRANK FERRORO, HELEN FERRORO and JOHN J. CHALMERS, *Defendants*.	Civil Action No. 48 C 1023

Statement as to Jurisdiction

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America, plaintiff herein files its statement particularly disclosing the basis upon which the Supreme Court of the United States has jurisdiction on a direct appeal to review the decision of the United States District Court entered in this cause July 26, 1949. A petition for appeal is presented to the District Court herewith, to-wit, on August 23d, 1949.

JURISDICTION

This appeal is prosecuted from a judgment of the District Court which in an opinion accompanying the judgment held invalid an Act of Congress, the Hous-

ing and Rent Act of 1947, as amended by Public Law 31, 81st Congress, 1st Session (P. L. 129, 422 and 464 of the 80th Congress, P. L. 31, 81st Congress, 1st Session). The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this case is conferred by Section 1252 of Title 28 of the United States Code, Judiciary and Judicial Procedure (Act of June 25, 1948; C. 646, 62 Stat. 902; 28 U. S. C. 1252).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment in this case on direct appeal.

Bowles v. Williangham, 321 U. S. 503.
Woods v. Miller Co., 333 U. S. 138.

The Statutes Involved

The pertinent portions of the Housing and Rent Acts of 1947, (Public Law 129, 80th Congress, 1st Session), as amended by the Acts of 1948 (Public Law 464, 80th Congress, 2nd Session), and 1949 (Public Law 31, 81st Congress, 1st Session), are set out verbatim in Appendix B to this statement.

The Housing and Rent Act of 1947 was enacted on June 30, 1947, and became effective July 1, 1947. The constitutionality of Title II thereof was sustained by the Supreme Court in the case of *Woods v. Miller Co.*, 333 U. S. 138. The 1947 Act was amended and extended by the Housing and Rent Act of 1948, Public Law 464, 80th Congress and by the Housing and Rent Act of 1949, Public Law 31, 81st Congress. The case presents the question of the constitutionality of Section 204(j) of the Housing and Rent Act of 1947, a section added to the Act by the Act of 1949, *infra*, p. 46, as well as the further question of the constitutionality of the Housing and Rent Act as a whole because of the inclusion of Section 204.

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The Housing and Rent Act of 1947 fixed maximum rents in those areas which on March 1, 1947 were under rent control pursuant to the Emergency Price Control Act of 1942 (50 U. S. C. App. 901 *et seq.*). Such rents were those in effect on June 30, 1947 and the Act forbade the demand for, or receipt of rents in excess thereof. (Sec. 204(b), *infra*, Local Rent Advisory Boards were provided for which could recommend decontrol to the Housing Expediter, and the Housing Expediter was authorized on his own initiative to remove controls when the demand for housing accommodations was sufficiently met. Specific grounds for eviction were prescribed (Sec. 209) p. 48. The 1948 Act gave Local Advisory Boards greater authority and provided for appeals to the Emergency Court of Appeals from disapprovals by the Housing Expediter of their recommendations for decontrol (Sec. 204(c) (e), pp. 30, 31. The 1949 Act amplified the field of action of the Local Advisory Boards and added Section 204(j) *infra*, which permitted a state to establish state rent control (Sec. 204 (j) (1)), or to determine that rent control is no longer necessary in its territory or any part thereof (Sec. 204(j) (2), and which further permitted incorporated municipalities to decontrol rents within their territorial limits (Sec. 204(j) (3), *infra*, p. 48.

Suits under the 1949 Act were to be brought in the name of the United States of America (Sec. 206(b), *infra*, p. 48. The specific grounds for eviction were no longer set forth in the Act, but were to be established by the Housing Expediter by appropriate regulation. (Sec. 209), *infra*, p. 48.

The Issues and Ruling Below

The present action was instituted by the Housing Expediter under the Housing and Rent Act of 1947, as amended by the Housing and Rent Act of 1948, to en-

join the defendant, Shoreline Cooperative Apartments, Inc., from violating the provisions of Section 209(a) (2) of the Act by evicting tenants of a cooperatively owned apartment house, when less than 65% of the stockholders were tenants in occupancy. The other defendants were purchasers of stock who desired possession of the apartments. While the suit was pending the 1949 Act was adopted, effective April 1, 1949. A supplemental complaint was filed substituting the United States as plaintiff and seeking to enjoin violations of Section 209 of the amended Act and the Regulations issued pursuant thereto,[1] which in so far as pertinent here continued in effect the substance of the prior statute. The defendants filed motions to dismiss the complaint on the grounds that the complaint failed to state a cause of action upon which relief could be granted, and that Section 209 was void because it violated the constitutional rights of the defendants.

The District Court dismissed the case, holding that Section 204(j) of the Housing and Rent Act of 1949 (which was not directly involved) was an unconstitutional delegation of power by Congress, and that, since Congress would not have passed the 1949 Act without Section 204(j), the separability clause (Sections 303 of the 1949 Act) providing for the separation of invalid provisions were ineffective to justify the operation of the Act without Section 204 (j). The entire Act was thus held unconstitutional.

On July 26, 1949, judgment was entered dismissing the cause of action.

The Questions are Substantial

1. Section 204(j) of the Act, as amended in 1949, provides that federal rent control shall terminate (1)

[1] 14 F. R. 1571.

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whenever the governor of any State advises the Housing Expediter that the legislature "has adequately provided for the establishment and maintenance of maximum rents, or has specifically expressed its intent that State rent control shall be in lieu of federal rent control"; (2) "if any State by law declares that Federal rent control is no longer necessary in such State or any part thereof"; and (3) if the governing body of any community after hearing finds that "there no longer exists such a shortage in rental housing accommodations as to require rent control", and its conclusion is approved by the governor of the State.

If federal administrative officials had been empowered to terminate rent control on the basis of the standards contained in Section 204 (j), there could be no doubt as to the validity of the delegation of power. The standards are not substantially different from those upheld by this Court in *Woods* v. *Miller Co.*, 333 U. S. 138, 144.

The fact that the findings which make the federal law inoperative are made by state rather than federal officials does not render the law unconstitutional. Federal laws have not infrequently been made operative or inoperative by reason of state action.[2] Cf. *Clark Distilling Co.* v. *Western Md. Ry. Co.*, 242 U. S. 311, 326; *Kentucky Whip & Collar Co.* v. *Illinois Central R. Co.*, 299 U. S. 334; *Rupert* v. *United States*, 181 Fed. 87 (C. C. A. 8); *Griswold* v. *President*, 82 F. 2d 922 (C. C. A. 5). The Conformity Act, predecessor to the Federal Rules of Civil Procedure, required the federal courts to apply state procedural laws. R. S. 914; *Amy* v. *Watertown* (No. 1), 130 U. S. 301, 320. Cf. *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 190 (state

[2] See Mermin, *Cooperative Federalism Again*, 57 Yale Law Journal 1, 22n-23n (1947).

bankruptcy law provision adopted by federal legislation). See also *United States* v. *Jones*, 109 U. S. 513, 519, in which the Court said:

> Yet from the time of its establishment that government has been in the habit of using, with the consent of the State, their officers, tribunals, and institutions as its agents. Their use has not been deemed violative of any principle or as in any manner derogating from the sovereign authority of the federal government; but as a matter of convenience and as tending to a great saving of expense.

And this Court has upheld federal statutes providing that certain administrative orders should become effective only if approved by a specified portion of farmers in a referendum vote. *Currin* v. *Wallace*, 306 U. S. 1, 15-16; *United States* v. *Rock Royal Co-op.*, 307 U. S. 533, 577-8.

Even apart from these analogies, the nature of the subject regulated makes specially appropriate the relinquishment of control to the States in the manner provided by Congress. The control of rents normally falls within the police powers of the State. The need for regulating the subject under the war powers of Congress has been exceptional, and has not been regarded as permanent. In *Woods* v. *Miller Co., supra*, in dealing with the contention that rent control under the war power might be permanent, this Court declared that "We cannot assume that Congress is not alert to its constitutional responsibility" in this respect (333 U. S., at 144). The technique adopted by Congress in Section 204(j) is a method of gradually transferring the subject from federal to State control as the necessity for federal regulation in the particular State or community diminishes. It was not unreasonable for Congress to rely upon State and local of-

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ficials to determine the needs of the local communities. And the means chosen by Congress to terminate the control under the war powers cannot be held unconstitutional unless there is no reasonable basis for them. *McCulloch* v. *Maryland*, 4 Wheat. 316, 409-10.

2. Even if it be assumed that Section 204(j) is unconstitutional the court below erred in holding the entire statute inseparable and therefore unconstitutional. The statute unquestionably can operate even if Section 204(j) is stricken as invalid. The statute still permits the Housing Expediter to decontrol rents in any area "if in his judgment the need for continuing maximum rents in such area or portion thereof • • • no longer exists". In addition, the new statute terminates of its own force on June 30, 1950, unless the President or Congress earlier so proclaims. Section 204(f), as amended.

The intention of Congress that the statute be severable is expressed in the separability clause, Section 303, *infra*, p. 51. "Congress has thus said that the statute is not an integrated whole, which as such must be sustained or held invalid. On the contrary, when validity is in question, 'divisibility and not integration is the guiding principle.' Invalid parts are to be exercised and the remainder enforced. When we are seeking to ascertain the congressional purpose, we must give heed to this explicit declaration." *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419, 434. The possibility that some of the members of Congress who voted to pass the legislation might not have done so in the absence of Section 204(j) is not sufficient basis for disregarding the separability clause, which is an express statutory manifestation of legislative intention as to severability.

3. The issue is one of the gravest importance to the public welfare. Some 14,000,000 housing accommodations are presently under rent control; and the tenants will be left defenseless, both with regard to the rent they would have to pay and with regard to eviction from their dwellings, if the present decision should be allowed to stand.[3]

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

Appendix A

In the District Court of the United States
For the Northern District of Illinois
Eastern Division

TIGHE E. WOODS, HOUSING EXPEDITER, Office of the Housing Expediter, For and on behalf of the United States, *Plaintiff*, vs. SHORELINE COOPERATIVE APARTMENTS INC., a corporation, J. M. NICHOLSON, ROBERT R. LUMSDEN, CHARLES L. ZERLINER, NATHAN SUCHERMAN, SAMUEL SHRAYER, MILTON TINSLEY, FRANK FERRARO, HELEN FERRARO and JOHN J. CHALMERS, *Defendants.*	Civil Action No. 48 C 1023

The precise question for decision in this case is the validity of the Housing and Rent Act of 1949 because

[3] In *United States* v. *Mrs. Grace Hartley Emery* (S. D. Cal.), No. 9818-Y, decided August 8, 1949, Judge Yankwich upheld the constitutionality of the Housing and Rent Act of 1949, and stated that he did not agree with the decision rendered in the instant case. Copy of this decision is attached hereto in the Appendix.

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the only basis or reason for claiming jurisdiction in this Court is founded upon that Act. If the Act is constitutional and valid, I have jurisdiction to proceed and determine the issues in question. If the Act is not constitutional I have no power to proceed further. An unconstitutional Act is void at all times and for all purposes, and because jurisdiction can neither be conferred nor waived by consent of the parties it is a question that may be raised at any time in any court. It would be inadvisable for me to proceed further without deciding that basic question, and reluctant as I am to assume so grave a responsibility I must do so.

By bench announcement at the conclusion of the arguments, and after consideration of the original briefs, I have made it clear that I consider the local option provisions of the present Act to be unconstitutional and void. (Sec. 204, j. 1, 2 and 3) I shall presently express my reasons for so holding. At that time I stated that I would consider the further question as to whether or not the invalidity of those provisions rendered the entire Act void and would announce my final conclusions in a written opinion. Since that time the parties have filed additional briefs and at my request have submitted to me all those portions of the Congressional Record appearing to be pertinent to the subject, with various passages marked by counsel. I have considered all of these, together with the additional briefs, and after much study and thought am now ready to give my final decision.

Specifically, as to the so-called "local option" provisions, I have never entertained any doubt after reading the original briefs and reading the provisions themselves. No contention has been presented by any counsel in this suit, nor as far as I can learn in the halls of Congress, that this Act is based upon anything except the war powers of Congress, and frequent ref-

erences to the Congressional Record indicate that those war powers were hardly ever mentioned in debate or reports of committees. The entire theory of Congress is that it is desirable to continue rent controls for a limited time, but in the preamble to the Act it is first stated and most definitely stressed that it is desirable to be through with those controls as rapidly as possible, and the debates of Congress, as well as the preamble to the Act in question, have reference to the economic aftermath of war—none of them to continuation of hostilities nor any reference to the successful prosecution of war. In this opinion I am definitely refusing to consider any facts, although it is obvious to everyone that these rent controls are continued for economic reasons only and that they have no real reference to the prosecution of any war anywhere. Since we have signed no treaties of peace, I assume that we are still at war and that Congress still possesses full war powers. The only question is whether or not the present Act is within the power granted to Congress to declare war, and the implied power to take any act or pass any law to carry that power of declaration into full force and effect. In short, I am assuming that Congress still has the power to enact a valid Rent Control Act.

This brings into immediate focus the question of whether the Act under consideration is within those powers. Inasmuch as this law was only passed a few months ago, and there has been no opportunity for its interpretation by our highest court, I am forced to consider previous decisions on previous Acts and from there to proceed as with any other case of first impression.

Perhaps it is well to start this way. Our United States Supreme Court and the Supreme Courts of many States have many times pointed out that a fre-

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quent recurrence to fundamental principle is necessary to the maintenance of our constitutional form of government and this is especially true when legislation is passed under the war powers, because they are invariably brought forth under the fervor of patriotism and the all-prevailing desire of Congress and the Court to aid and not impede the ultimate victory which everyone desires. It has been true after every war and is true after the most recent one that the fundamental principles of the Constitution are likely to be invaded, and unless from time to time we revert to those principles we may eventually find that the liberties of the people and the limitations of the Constitution have been seriously eroded if not completely impaired.

I start with the fundamental principle that Congress has only such powers as are given to it by the Constitution or necessarily implied therefrom to carry those powers into effect, and with the second fundamental principle which is also expressed in the Constitution that all powers not therein expressly given to Congress or prohibited to the States are expressly reserved to the States and to the people. It is also necessary to consider that further constitutional provision that no State shall pass any law impairing the obligation of contract. The present controversy involves all of these provisions.

I am aware of the holdings in *Block* v. *Hirsh*, 256 U. S. 135, and *Marcus Brown Holding Company* vs. *Marcus Feldman*, 256 U. S. 170, and it may be that under those two decisions the provisions of the Constitution prohibiting any State to pass any law impairing the obligation of contract has itself materially been impaired. These cases, however, concerned the police power of Congress in the District of Columbia and the State Legislature of New York. It would be

inappropriate and unjudicial of me to utter any criticism of any decision of the United States Supreme Court. It must be pointed out, however, that it is generally conceded that outside of the District of Columbia and with other exceptions not necessary to be noted here the Congress possesses no police power (11 Am. Juris. Sec. 255), and since the case can be decided without reference to that particular point, I will pass on it.

As above indicated, I have assumed, and throughout this opinion do assume, that the war powers of Congress still exist, but it becomes instantly necessary to consider whether or not these war powers may be delegated to States, municipalities, or other subdivisions of Government. It will be noted on reading the local option provisions of this Act that no standards are set up either for the determination of basic facts or rules for guidance of the State, municipalities, or other political subdivisions, in determining whether or not they shall remain under rent control. As far as Congress is concerned it has attempted to leave the matter entirely open to arbitrary determination by each State or other subdivision to decide for itself whether or not it wants or needs rent control, and this entirely without rules or guide posts of any kind as to whether or not such rent control may be necessary in connection with the prosecution or maintenance of the war effort.

Thus, in paragraph (j), (1), it provides that whenever the Governor of any State advises the Housing Expediter that the Legislature of such State has adequately provided for the establishment and maintenance of maximum rents or has specifically expressed its intent that State rent control shall be in lieu of Federal rent control, with respect to housing accommodations within defense-rental areas in such State,

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etc., all Federal control shall cease. If it were not for the cases of *Block* v. *Hirsh*, and *Marcus Brown Holding Co.* v. *Feldman, supra*, there could be little doubt that no State would have any power to establish rental controls at all, and even with those two cases in the books it is still doubtful if such power exists in any State except under some emergency exercise of police power. Certainly, no State could exercise any portion of the war power. No definition is given as to what a State must do adequately to provide for the maintenance of maximum rents. There is no guide as to what constitutes sufficient housing or what should constitute maximum rents. The effect is to leave that question to the arbitrary action of any State.

Section (j) (2) is even broader and more loose in its provisions for discarding Federal rent control. That section merely provides that if any State (without reference to any war effort or without reference to any reason or limitation on its action) declares that Federal rent control is no longer necessary in such State, or any part thereof, all controls shall be immediately dissolved. It is up to the Legislature to act reasonably or whimsically as it may see fit entirely without reference to any war effort.

Section (j) (3) provides for de-control under even more lax conditions in any incorporated city, town or village, merely upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law based upon a finding by such governing body reached as the result of public hearing held after ten days' notice that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village, provided that such resolution is first approved by the Governor of the State before being transmitted to the Housing Expediter.

No standard is laid down as to what is or what is not a shortage of rental housing accommodations, nor is there any provision as to the procedure for or findings at a public hearing or how that public hearing is to reach any conclusion upon the question of whether or not rent control is no longer necessary or desirable. Upon the general theory that there are more tenants than landlords this provision would certainly be an undemocratic and unconstitutional way of determining whether or not rents should be controlled and limitations thus kept upon the rights of citizens freely to contract.

Acts of this kind have many times been declared unconstitutional. As near as I can determine from the decided cases it is not only permissible but necessary that power be delegated to administrative officers or agencies to determine the facts and apply the law to the facts as thus determined. Illustrations of this are too numerous to mention, such as the first and second war power acts, as well as many others, but this is the first case that has come to my attention in which Congress has attempted to leave it to other legislative bodies arbitrarily to determine whether or not they would be within or without the union so far as an Act of Congress is concerned—an Act which must depend upon the war power if it has any foundation at all. I can see no difference between this situation and one in which Congress should pass a selective service law with the provision that any State which doesn't care to send soldiers may pass a law and say they did not choose to be involved, or an Interstate Commerce Act with the provision that any State that chose not to be governed thereby could declare itself out. I can see no reasonable reason to believe that an Act of Congress under its war powers can contain any such provisions as might make it inoperative at the

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option of any or all of the various states or subdivisions of States, by their arbitrary action and without guides, standards or specifications of facts.

This is not intended to indicate any doubt on my part that war powers may operate with inequality as among different States or portions of States if those inequalities necessarily result from substantial facts determined by lawful authority. Thus, I can see no objection to a Rent Control Act which is made applicable to various parts of the country depending on different states of facts and different conditions and necessities for carrying on the war, provided there is a pattern to follow and proper executive or administrative means laid out for its apportionment. Thus, when the Rent Control Act was passed it was recognized that there were vital defense areas in which controls must be exercised and these were to be determined by duly authorized administrators. Thousands of other executive orders of the first and second war powers Act were likewise delegated to administrators to determine the facts and to apply the law as the facts might warrant. The vice of the present law lies in its capriciousness, inequality of application, and total lack of any relationship between the carrying on of the war and the application of the law. It amounts to an abrogation of the power of Congress. Two or three States have already declared themselves out, thus repealing the war efforts so far as those States are concerned, and if the other States should see fit to do likewise the Act of Congress would be utterly repealed or completely emasculated without any further act of its own and without regard to any power to make or maintain war.

In the case of *Woods* v. *Miller*, 333 U. S. 138, which is relied upon by the plaintiff, the Housing Act of 1947 is sustained as against an attack based upon unlawful

delegation of the powers of Congress. However, that Act, as this one, contains the provision:

> "The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect in any defense rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met."

Under this provision of the law the Supreme Court in the *Woods* case, speaking through Mr. Justice Douglas, said:

> "Under the present Act the Housing Expediter is authorized to remove the rent controls in any defense-rental area *if in his judgment the need no longer exists by reason of new construction or satisfaction of demand in other ways.* (Emphasis supplied) The powers thus delegated are far less extensive than those sustained in *Bowles vs. Willingham.* (321 U. S. 503) Nor is there here a grant of unbirdled administrative discretion. The standards prescribed passed muster under our decisions."

The vice of the present Act lies in the very fact that no authorized person is required to use any judgment and there is a grant of unbridled administrative discretion subject neither to reason nor findings of fact. This delegation of power is not to an administrator whose selection is controlled by Congress but to States. municipalities, other subdivisions or town meetings. The case is no authority for the position taken by the plaintiff but rather to the contrary.

It is a grave and serious matter for any Judge or group of Judges to hold an Act of Congress to be un-

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constitutional. Nevertheless, it must sometimes be done. It was the intention of the framers of our Constitution that Federal Judges should be removed from politics and free from the popular clamor of transitory ideas and it was their intention that the Constitution should be a charter definitely and firmly fixed and to remain forever the law of the land unless and until it might be amended as therein provided. As Judges, our oath is not to support either the legislative or executive branches of Government, but only to support the Constitution. Unless we adhere firmly to this oath and fearlessly perform our duties as we see them, and to the best of our ability, it will be found some day that the liberties of the people have been eroded and such fundamental principles as the right to private property and freely to contract with respect thereto have been lost. In this connection I am considerably impressed by the language of Mr. Justice Jackson in his special concurrence in the *Woods* case:

> "No one will question that this (war) power is the most dangerous one to free government in the whole catalogue of powers. It usually is invoked in haste and excitement when calm legislative consideration of constitutional limitation is difficult. It is executed in a time of patriotic fervor that makes moderation unpopular. And, worst of all, it is interpreted by Judges under the influence of the same passions and pressures. • • •
>
> Particularly when the war power is invoked to do things to the liberties of people, or to their property or economy that only indirectly affect conduct of the war and do not relate to the management of the war itself, the constitutional basis should be scrutinized with care. • • •
>
> I cannot accept the argument that war powers last as long as the effects and consequences of

war, for if so they are permanent—as permanent as the war debts."

It is for these reasons that I have held the local option clauses to be invalid. There remains for consideration the question of whether or not the invalidity of these clauses invalidates the entire Act. That question in turn depends upon a construction of the saving clause (Sec. 305), and the interpretation of this clause must depend upon the intention of Congress as expressed in the preamble of the Act, indicated by the debates of Congress and whether or not it is the intention of Congress that the remaining portions of the Act should prevail with the major portion of its intent expressed in the preamble removed from the Act.

Preamble to the Act of 1949 is to be found in Sections 201 (a) and (b) of the Act of 1947 which are carried forward into the Act of 1949. This preamble declares the policy of Congress under the heading "Declaration of Policy" in the following language.

> "(a) The Congress hereby reaffirms the declaration in the Price Control Extension Act of 1946 that unnecessary or unduly prolonged controls over rents would be inconsistent with the return to a peacetime economy and would tend to prevent the attainment of the goals therein declared.
>
> (b) The Congress therefore declares that it is its purpose to terminate at the earliest practicable date all Federal restrictions on rents on housing accommodations. At the same time the Congress recognizes that an emergency exists and that, for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period, as well as the

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attainment of other salutary objectives of the above-named Act, it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in *defense-rental* areas. Such restrictions should be administered with a view to prompt adjustments where owners of rental housing accommodations are suffering hardships because of the inadequacies of the maximum rents applicable to their housing accommodations, and under procedures designed to minimize delay in the granting of necessary adjustments, which, so far as practicable, shall be made by local boards with a minimum of control by any central agency.

(c) To the end that these policies may be effectively carried out with the least possible impact on the economy pending complete decontrol, the provisions of this title are enacted."

It is clear from a reading of this preamble, which is called a declaration of policy, that the principal object had in mind was to end that control, which it considered no longer desirable and to do so with the least possible impact upon the general economy. It is to be noted that no reference is made to a continuation of the war effort nor is there any definition of defense rental areas except as they had previously been determined by the Housing Expediter.

The principal argument for the plaintiff is based upon Section 305 of the present Act, which is as follows:

"If any provision of this Act or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of the Act, and the applicability of such provision to other persons or circumstances shall not be affected thereby."

It will be noted in considering this Section that the word is "provision", not the plural "provisions."

It is also to be noted that the reference "to any person or circumstance" is a customary clause added to many statutes by both State and Federal Governments intended to prevent the failure of the entire Act through the failure of some inconsequential portion thereof. A provision such as this is sometimes valid and sometimes invalid and it is a matter of judicial interpretation as to whether a saving clause of this kind can save an entire Act if the very essence and purpose of it is unconstitutional.

The debates of Congress are helpful although not controlling. A study of those debates indicates that very little thought was given to the question of constitutionality. Senators Bricker and Wiley exchanged some views on this point and some slight reference was made to it in the House, but practically all of the remarks in Congress, so far as they have been called to my attention, were directed to the economic problem of housing with no reference at all that I can find as to the necessity of this Act for the maintenance of a state of war. I must, therefore, place principal reliance on the preamble of the Act and Congress's own declaration of policy. As Congress itself stated, the principal object of the Act was to secure de-control at the earliest possible moment and with the least possible impact upon the general economy and it is entirely clear from all the sources available, including the debates in Congress, that the Act could never have passed without the local option provisions. They were the means principally relied upon as a way of returning the Government to the States and subdivisions immediately. Without these provisions there would be no way of decontrolling an area except through the powers given the administrator, and it is entirely clear from the local

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option provisions themselves that Congress did not consider those administrative means as adequate for accomplishing its declared purpose. Section 305 shows only an intention of congress that if some single provision of the Act as applied to some particular circumstance should be held unconstitutional it should not affect the remainder of the Act. Congress did not say nor could it say that if the most vital portions of the Act were invalid the remaining fragments should prevail. It is my opinion that the unconstitutional portions of this Act, if considered with its preamble, greatly outweigh all of the other provisions for de-control.

This view of the case in my opinion is fully sustained by the majority opinion in *Carter* v. *Carter Coal Co.*, 298 U. S. 238. The saving clause in that case was identical with the saving clause in this one, and everything that was said in the majority opinion in that case, beginning on page 312, is applicable to the case now under consideration. There is little point in my repeating it here because I consider myself bound by it and firmly believe it to be sound law. It is written in accordance with the general rule of frequent application that if the valid and invalid parts of a law are so bound together that the invalid part is a material inducement to the valid portion then the whole is necessarily invalid. I believe that is the situation in this case.

There is one more reason for holding this law indivisible and I think it is a conclusive one—one that closes the door on the argument. Had the Congress desired and intended to continue rent control without these local option clauses it could have done so by a simple Act extending the expiration date of the then existing law.

It follows that I must necessarily find the entire Act invalid and being invalid this Court has no jurisdiction.

The judgment will, therefore, be that the cause now is dismissed for want of jurisdiction.

/s/ ELWYN R. SHAW
United States District Judge

Summary of Federal Judge Leon R. Yankwich's Opinion

upholding 1949 Housing and Rent Act in the case of United States of America v. Mrs. Grace Hartley Emery and others. #9819-Y, August 8, 1949.

(In the above case, the defendant sought to dismiss the complaint on the ground of the unconstitutionality of the 1949 Housing and Rent Act and Judge Yankwich denied the motion to dismiss. His opinion was oral and involved rather lengthy exchange of views with counsel on various points raised. The following summary of the opinion was prepared under the direction of Judge Yankwich from the reporter's transcript and was allowed by Judge Yankwich to be released as a correct summary of the rulings.)

By Judge Leon R. Yankwich
U. S. District Judge

I do not agree with the recent decision in the case of *Woods* v. *Shoreline Cooperative Apartments, Inc.*, decided July 13, 1949, by the District Court for the Eastern Division of Illinois, wherein the Housing and Rent Act of 1949 was held unconstitutional. The present Act follows the pattern of other Rent Acts. The war emergency still exists and the United States Supreme Court has held repeatedly that war powers may be exercised for a reasonable number of years after the

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actual "shooting war" ends, to take care of actual economic dislocations that follow each war. *(Fleming* v. *Mohawk etc. Lbr. Co.,* 1947 331 U. S. 111.)

In the case of *Lewis* v. *Anderson, Secretary of Agriculture,* 72 Fed, Supp. 119, involving sugar controls, I held that administrative penalties could be imposed on retailers for violating sugar controls after the "shooting war" had ended. I used this language, which is as applicable today as on June 9, 1947:

"Wars have never actually terminated on the day 'cease-fire' orders were given. Many of them continued for decades, not so much in the form of actual fighting, but in the disruption and dislocation which they caused in the life of the nations involved. These facts, which are truisms to any student of history, apply especially to modern warfare as exemplified by the last war. The destruction and the dislocation of the economic life of both the victor and the vanquished continued and will continue for years after the actual hostilities with Germany and Japan ended. And so those who are in charge of regulating and controlling the economic life of the nations involved in the war have the difficult problem of determining when the various controls should come to an end. Wishful and unrealistic thinking call for immediate cessation of all governmental interference with economic life. Prudent statesmanship, economic or other, realizes the danger of immediate decontrol. The persons who are loudest in demanding the immediate return to free economy complains most vociferously about 'sudden decontrol.' Rightly. For economic life cannot stand 'sudden shock.' Adjustment from war to peace-time economy, if it is to be helpful, must be gradual.

"The failure to understand these fundamental economic principles is responsible for many of the conten-

tions which are now made before the courts. Some litigants wish us to adopt the view that, regardless of what the Congress does, the actual cessation actually entitles businesses or acivities under control to be relieved from it."

The United States Court of Appeals for the Ninth Circuit, on June 22, 1949, in the case of *Woods* v. *McCord*, held that the various money recoveries, whether in the form of reimbursement or otherwise, are imposed for two purposes: (1) to make a landlord repay rent unlawfully exacted, and (2) to help enforce the law. This is a complete answer to the contention made here that the Congress cannot authorize the Housing Expediter to collect sums under the jurisdictional minimums of the United States District Court. Congress may choose the forum in which it will enforce its own laws. As the Constitution does not limit the amount of the jurisdiction of the District Courts, the Congress may make jurisdiction independent of the amount involved.

On the question of delegation of legislative power, the case of *Carter* v. *Carter Coal Company*, 1936, 298 U. S. 238, has lost its force. When the Congress authorized cities to recommend decontrol after hearings, the delegation of power in that respect was no greater than that given to the advisory committees under the Agricultural Act, which many years ago I upheld in the case of *Redlands Foothill Groves* v. *Jacobs*, 30 Fed. Supp. 995. This case was upheld by the upper courts.

So the matters presented in this case are not new as far as this Court is concerned. I have ruled on similar matters in the past. If to this fact I add the obligation of lower courts to apply the presumption of constitutionality to acts of the Congress, it is evident that none of the points raised is meritorious, and I need not wait until the Supreme Court has acted on the matter.

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Appendix "B"

The Housing and Rent Act of 1947, as Amended

(Public Law 129, Eightieth Congress, approved June 30, 1947, as amended by Public Law 422, Eightieth Congress, approved February 27, 1948, Public Law 464, Eightieth Congress, approved March 30, 1948, and Public Law 31, Eighty-first Congress, approved March 30, 1949.)

AN ACT relative to maximum rents on housing accommodations; to repeal certain provisions of Public Law 388, Seventy-ninth Congress, and for other purposes.[1]

Sec. 204. (a) The Housing Expediter shall administer the powers, functions, and duties under this title; and for the purpose of exercising such powers, functions, and duties, and the powers, functions, and duties granted to or imposed upon the Housing Expediter by title I of this Act, the Office of Housing Expediter is hereby extended until the close of June 30, 1950.[2]

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[1] The title of Public Law 31, 81st Congress, reads as follows: "An act to extend certain provisions of the Housing and Rent Act of 1947, as amended, and for other purposes." The title of Public Law 464, 80th Congress, reads as follows: "An act to extend certain provisions of the Housing and Rent Act of 1947, to provide for the termination of controls on maximum rents in areas and on housing accommodations where conditions justifying such controls no longer exist and for other purposes." The title of Public Law 422, 80th Congress, reads as follows: "An act to continue for a temporary period certain provisions of the Housing and Rent Act of 1947."

[2] This subsection was amended by section 203 (a) of Public Law 31, 81st Congress, to substitute "June 30, 1950" for "March 31, 1949."

This subsection was amended by section 202 (a), Public Law 464, 80th Congress, to substitute "March 31, 1949" for "March 31, 1948." The original subsection was amended by section 2, Public Law 422, 80th Congress, to substitute "the close of March 31, 1948" for "February 29, 1948." The original subsection read as follows:

"Sec. 204 (a) The Housing Expediter shall administer the powers, functions, and duties, under this title; and for the purpose of exercising such powers, functions, and duties, and the powers, functions, and duties granted to or imposed upon the Housing Expediter by title I of this Act, the Office of Housing Expediter is hereby extended until February 29, 1948."

(b)[3] (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, and subsections (h) and

[3] This subsection was amended by section 203 (b), Public Law 31, 81st Congress, to read as provided above. Prior to such amendment and as amended by section 202 (b), Public Law 464, 80th Congress, the subsection read as follows:

"SEC. 202 (b) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, during the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order, make such individual and general adjustments in such maximum rents in any defense-rental area or any portion thereof, or with respect to any housing accommodations or any class of housing accommodations within any such area or any portion thereof, as may be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title. In the making of adjustments to remove hardships due weight shall be given to the question as to whether or not the landlord is suffering a loss in the operation of the housing accommodations.

"(2) In any case in which a landlord and tenant, on or before December 31, 1947, in accordance with the provisions of this subsection as then in effect, voluntarily entered into a valid written lease in good faith with respect to any housing accommodations, such housing accommodations shall not be subject to any maximum rent established or maintained under the provisions of this title unless such lease is hereafter terminated or expires before March 31, 1949, in which case the maximum rent for such housing accommodations shall, through March 31, 1949, be not in excess of 15 per centum over the maximum rent which in the absence of a lease would be in effect with respect thereto on the date of enactment of the Housing and Rent Act of 1948: *Provided,* That the landlord and a tenant (including any new tenant) may enter into a new voluntary lease subject to the conditions, specified in paragraph (3) of this subsection, applicable with respect to landlords and tenants who have not heretofore entered into voluntary leases, except that no maximum rent need be in effect on the date of execution of such new lease.

"(3) In any case in which a landlord and tenant (including any new tenant) on or before December 31, 1948, voluntarily enter into a valid written lease in good faith (at any rental agreed upon in the lease, but not in excess of 15 per centum over the maximum rent which in the absence of a lease would be in effect with respect thereto on the date of enactment of the Housing and Rent Act of 1948) with respect to any housing accommodations for which a maximum rent is in effect under this section, and such lease takes effect on or after the effective date of the Housing and Rent Act of 1948 and expires on or after December 31, 1949, and if a true and duly executed copy of such lease is filed, within 15 days after the date of execution of such lease, with the Housing Expediter, such housing accommodations shall not thereafter be subject to any maximum rent established or maintained under the provisions of this title unless such lease is terminated before March 31, 1949. If any such lease is so terminated the maximum rent (unless a subsequent lease entered into under the provisions of this paragraph is in force) shall be not in excess of 15 per centum over the maximum rent which in the absence of a lease would be in effect with respect thereto on the date of enactment of the Housing and Rent Act of 1948.

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(i), during the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order, make such individual and general adjustments in such maximum rents in any defense-rental area or any portion thereof, or with respect to any housing accommodations or any class of housing accommoda-

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Footnote 3 continued

"(4) A landlord shall file a report with the Housing Expediter of any termination of a lease entered into under this subsection prior to the expiration date of the lease, including leases entered into under this subsection prior to the date of enactment of the Housing and Rent Act of 1948. Such report shall be filed within 15 days after such termination or 15 days after the effective date of such Act, whichever is the later date."

The original subsection read as follows:

"SEC. 204. (b) During the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order, make such adjustments in such maximum rents as may be necessary to correct inequities or further to carry out the purposes and provisions of this title: *And provided further,* That in any case in which a landlord and tenant, on or before December 31, 1947, voluntarily enter into a valid written lease in good faith with respect to any housing accommodations for which a maximum rent is in effect under this section and such lease takes effect after the effective date of this title and expires on or after December 31, 1948, and if a true and duly executed copy of such lease is filed, within fifteen days after the date of execution of such lease, with the Housing Expediter, the maximum rent for such housing accommodations shall be, as of the date such lease takes effect, that which is mutually agreed between the landlord and tenant in such lease if it does not represent an increase of more than 15 per centum over the maximum rent which would otherwise apply under this section. In any case in which a maximum rent for any housing accommodations is established pursuant to the provisions of the last proviso above, such maximum rent shall not thereafter be subject to modification by any regulation or order issued under the provisions of this title. No housing accommodations for which a maximum rent is established pursuant to the provisions of the last proviso above shall be subject, after December 31, 1947, to any maximum rent established or maintained under the provisions of this title."

tions within any such area or any portion thereof, as may be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title: *Provided, however,* That the landlord certifies that he is maintaining all services furnished as of the date determining the maximum rent and that he will continue to maintain such services so long as the adjustment in such maximum rent which may be granted continues in effect. In making and recommending individual and general adjustments to remove hardships or to correct other inequities, the Housing Expediter and the local boards shall observe the principle of maintaining maximum rents for controlled housing accommodations, so far as is practicable, at levels which will yield to landlords a fair net operating income from such housing accommodations. In determining whether the maximum rent for controlled housing accommodations yields a fair net operating income from such housing accommodations, due consideration shall be given to the following, among other relevant factors: (A) Increases in property taxes; (B) unavoidable increases in operating and maintenance expenses; (C) major capital improvement of the housing accommodations as distinguished from ordinary repair, replacement, and maintenance; (D) increases or decreases in living space, services, furniture, furnishings, or equipment; and (E) substantial deterioration of the housing accommodations, other than ordinary wear and tear, or failure to perform ordinary repair, replacement, or maintenance.

(2) In any case in which a valid written lease with respect to any housing accommodations was entered into and filed in accordance with the provisions of this subsection (b) as then in effect, and such lease was in effect on the effective date of the Housing and Rent Act of 1949, such housing accommodations shall be subject

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to the provisions of this title and, until such lease is terminated or expires, the maximum rent for said accommodations shall be the rent set forth in said lease.

(3) In any case in which a valid written lease with respect to any housing accommodations was entered into and filed in accordance with the provisions of this subsection (b) as then in effect, and such lease has heretofore terminated or expired or hereafter terminates or expires, such housing accommodations shall be subject to the provisions of this title and the maximum rent for said accommodations shall be the rent set forth in said lease, plus or minus applicable individual adjustments: *Provided, however,* That if such housing accommodations are in a defense-rental area in which a general increase in maximum rents has been or is hereafter granted, the maximum rent shall be said lease rent plus or minus applicable individual adjustments, or the maximum rent in the absence of a lease, whichever is higher.

(4) If a lease entered into under this subsection has heretofore terminated or hereafter terminates, prior to the expiration date of such lease, the landlord shall file with the Housing Expediter a report of the termination of such lease, unless a report of such termination was filed with the Housing Expediter prior to the effective date of the Housing and Rent Act of 1949. Such report shall be filed within 15 days after the date of such termination or 15 days after the effective date of the Housing and Rent Act of 1949, whichever is the later date.

(5) In order to help assure fair adjustments for tenants and small landlords, the Housing Expediter is authorized and directed to designate for every defense-rental area an officer whose function shall be to assist tenants and small landlords by—

(A) informing them concerning the conditions under which rent adjustments may be obtained;

(B) helping in the preparation of applications for rent adjustments; and

(C) providing them with such other information and services as may be necessary and appropriate.

(c) The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense-rental area or portion thereof or with respect to any class of housing accommodations in any such area or portion thereof, if in his judgment the need for continuing maximum rents in such area or portion thereof or with respect to such class of housing accommodations no longer exist, due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met. The Housing Expediter is further authorized and directed to remove maximum rents for any or all luxury housing accommodations in any defense-rental area or portion thereof, if in his judgment such action would result in the creation of additional rental units by conversion.[4] The Housing Expediter shall from time to time make surveys with a view to carrying out the purpose of this subsection to decontrol housing accommodations at the earliest practicable time.

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[4] This sentence was added by section 203 (c), Public Law 31, 81st Congress, to this subsection as amended by section 202 (c), Public Law 464, 80th Congress. The original subsection read as follows:

"SEC. 204 (c) The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met."

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(d) The Housing Expediter is authorized to issue such regulations and orders, consistent with the provisions of this title, as he may deem necessary to carry out the provisions of this section and section 202 (c).

(e)[5] (1) The Housing Expediter is authorized and directed to create and, if necessary, continue in exist-

[5] This subsection was amended by section 203 (d), (e) and (f) of Public Law 31, 81st Congress, to read as provided above. Prior to such amendment and as amended by section 202 (d), Public Law 464, 80th Congress, this subsection read as follows:

"SEC. 204 (e) (1) The Housing Expediter is authorized and directed to create in each defense-rental area or such portion thereof as he may designate, a local advisory board, each such board to consist of not less than five members who are citizens of the area and who, insofar as practicable, as a group are representative of the affected interests in the area, to be appointed by the Housing Expediter, from recommendations made by the respective Governors: *Provided*, That in any case where the Governor has made no recommendations for original appointments to local boards or appointments to fill vacancies, within thirty days after request therefor (subsequent to the date of enactment of the Housing and Rent Act of 1948) from the Housing Expediter, the Housing Expediter shall without such recommendations appoint the original members of such boards or such members as may be required to fill vacancies. Nothing in the foregoing provisions shall require the reappointment of present members of local advisory boards, but any change in the membership of any local advisory board necessitated by this provision shall be effectuated as promptly as may be practicable. Each such board shall have sufficient members to enable it promptly to consider individual adjustment cases coming before it on which the court shall make recommendations to the official administering this title within its area; and before recommending any such adjustment the board shall give notice to the parties and shall hold a hearing at the request of either party. Any local board may make such recommendations to the Housing Expediter as it deems advisable with respect to the following matters:

"(A) Removal of any or all maximum rents in the area, or any portion thereof, over which the local board has jurisdiction, or with respect to any class of housing accommodations within such area or any portion thereof, if in the judgment of the local board the need for continuing maximum rents in such area or portion thereof or with respect to such class of housing accommodations no longer exists, due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met; and

"(B) Adjustments, other than individual adjustments, in maximum rents in such area or any portion thereof or with respect to any class of housing accommodations within such area or any portion thereof, deemed by the local board to be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title; and

"(C) Operations generally of the local rent office with particular reference to hardship cases.

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once until the termination of this Act in each defense-rental area (whether or not under Federal rent control) or such portion thereof as he may designate, local advisory board. The Housing Expediter shall, whenever in his judgment there is need therefor, create a local advisory board in any part of an area designated

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Footnote 5 continued

"(2) The Housing Expediter shall furnish the local boards suitable office space and stenographic assistance and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense-rental areas which may be requested by such boards.

"(3) Upon receipt of any recommendation from a local board, the Housing Expediter shall promptly notify the local board, in writing, of the date of his receipt of such recommendation. Except as provided hereinafter in this subsection, within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropriate action shall promptly be taken to carry such recommendation into effect.

"(4) For the purposes of paragraph (3) any recommendation of a local board as to a matter referred to in paragraph (1) (A) or (B) shall be deemed to be appropriately substantiated and in accordance with applicable law and regulations, and shall be carried into effect as hereinafter provided—

"(A) if the local board held a public hearing on such matter, at which interested persons (including representatives of the State and of political subdivisions thereof) were given a reasonable opportunity to be heard, by interpleader or otherwise, with right to be represented by counsel;

"(B) if notice of the date, time, place, and purpose of such hearing was given (i) in writing to the Governor of the State not less than fifteen days prior to such date, and (ii) by publication in a newspaper of general circulation in the area over which the local board has jurisdiction at least fifteen days prior to such date, and a second notice was given by publication in such a newspaper at least five days prior to such date;

"(C) if a copy of the local board's recommendation was filed with the Governor of the State within five days after such recommendation was mailed to the Housing Expediter;

"(D) if a record is made of the evidence adduced at the public hearing held by the local board, and the local board certifies and transmits to the Housing Expediter, with such recommendation, a transcript of such record, or of those parts of such record, upon which its recommendation is based and a written statement of its findings made upon the basis of such record; and

"(E) if the record so certified and transmitted to the Housing Expediter contains adequate and substantial evidence to support the findings and recommendation of the local board.

"If the Housing Expediter does not approve such recommendation within thirty days after the date of its receipt by him, he shall, within five days after the expiration of such thirty-day period, file such recom-

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under the provisions of the Emergency Price Control Act of 1942, as amended, prior to March 1, 1947, as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of such Act, in which maximum rents were not being regulated

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Footnote 5 continued
mendation in the Emergency Court of Appeals, together with the record and statement of findings of the local board and such statement as the Housing Expediter may desire to make as to his views on the matter. The statement of the Housing Expediter may be accompanied by such supporting information as the Housing Expediter deems appropriate. Thereupon the Emergency Court of Appeals shall have jurisdiction to enter, within thirty days after the date of its receipt of such recommendation from the Housing Expediter (or within such additional period of not more than thirty days as the court may find necessary in exceptional cases), an order approving or disapproving the recommendation of the local board. The recommendation, record, and statement of findings of the local board, together with the statement and supporting information filed by the Housing Expediter, shall constitute the record before the court. If the court determines that the recommendation is not in accordance with law, or that the evidence in the record before the court, including such additional evidence as may be adduced before the court, is not of sufficient weight to justify such recommendation, the court shall enter an order disapproving such recommendation; otherwise it shall enter an order approving such recommendation. The judgment and decree of the court shall be final. The powers heretofore granted by law to the Emergency Court of Appeals are hereby continued for purposes of exercise of the jurisdiction granted by this subsection. The court shall prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction under this paragraph. The Housing Expediter, the local board, and representatives of the State or States involved, shall be granted, to the extent determined by the court, an opportunity to be heard, by interpleader or otherwise, with right to be represented by counsel.

"(5) Any recommendation to which paragraph (4) applies, if an order of disapproval thereof has not been entered by the Emergency Court of Appeals within the time prescribed in such paragraph, shall be carried out by the Housing Expediter—

"(A) if it is with respect to a matter referred to in paragraph (1) (A), so that the decontrol is effected, retroactively if necessary, on the date recommended by the local board, but not before sixty days after the date of the receipt of such recommendation by the Housing Expediter: *Provided*, That during the period of ninety days beginning with the date on which such decontrol is effected, the provisions of section 209 of this title shall be in effect as though such decontrol had not been effected; and

"(B) if it is with respect to a matter referred to in paragraph (1) (B), so that the adjustment in maximum rents is effected, retroactively if necessary, on the date recommended by the local board, but not before thirty days after the receipt of the recommendation by the Housing Expediter.

"(6) In addition to employees furnished under paragraph (2), local boards are hereby authorized to employ such attorneys as may be necessary for purposes of hearings and court proceedings under this

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under such Act on March 1, 1947. Each such Board shall consist of not less than five members who are citizens of the area and who, insofar as practicable, as a group are representative of the affected interests in the area, to be appointed by the Housing Expediter, from recommendations made by the respective Gov-

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Footnote 5 continued
subsection; and may pay the necessary costs of reporting hearings, but the cost of stenographic services in reporting such hearings shall not be in excess of twenty-five cents per hundred words, with one additional copy at a cost of not exceeding five cents per hundred words. Attorneys shall be paid not to exceed $25 per day when actually employed, and shall be allowed necessary traveling and subsistence expenses.

"(7) Immediately upon the enactment of the Housing and Rent Act of 1948 the Housing Expediter shall communicate with the Governors of the several States advising them of the provisions of this subsection as amended and of the number and location of defense-rental areas in their respective States and the areas or portions thereof in which boards are to be appointed therein, and requesting the cooperation of the Governors of the several States in carrying out such provisions."

The original subsection read as follows:

"SEC. 204 (e) (1) The Housing Expediter is authorized and directed to create in each defense-rental area, or such portion thereof as he may designate, a local advisory board, each such board to consist of not less than five members who are representative citizens of the area, to be appointed by the Housing Expediter, from recommendations made by the respective Governors. Each such board shall have sufficient members to enable it promptly to consider individual adjustment cases coming before it on which the board shall make recommendations to the officials administering this title within its area. The local boards may make such recommendations to the Housing Expediter as they deem advisable with respect to the following matters:

"(A) Decontrol of the defense-rental area or any portion thereof;

"(B) The adequacy of the general rent level in the area; and

"(C) Operations generally of the local rent office, with particular reference to hardship cases.

"(2) The Housing Expediter shall furnish the local boards suitable office space and stenographic assistance and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense-rental areas which may be requested by such boards.

"(3) Within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropriate action shall promptly be taken to carry such recommendation into effect.

"(4) Immediately upon the enactment of this Act the Housing Expediter shall communicate with the governors of the several States advising them of the provisions of this subsection and of the number and location of defense-rental areas in their respective States, and requesting their cooperation in carrying out such provisions."

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ernors: *Provided*, That in any case where the Governor has made no recommendations for original appointments to local boards or appointments to fill vacancies, within thirty days after request therefor (subsequent to the date of enactment of the Housing and Rent Act of 1948) from the Housing Expediter, the Housing Expediter shall without such recommendations appoint the original members of such boards or such members as may be required to fill vacancies. Nothing in the foregoing provisions shall require the reappointment of present members of local advisory boards, but any change in the membership of any local advisory board necessitated by this provision shall be effectuated as promptly as may be practicable. Each such board shall have sufficient members to enable it promptly to consider individual adjustment cases coming before it on which the board shall make recommendations to the officials administering this title within its area; and before recommending any such adjustment the board shall give notice to the parties and shall hold a hearing at the request of either party. Upon petition by a representative group of tenants or landlords, the board, if it finds that the petition is substantial in character, shall hold a public hearing in accordance with the requirements set forth in paragraph (4) of this subsection on any of the matters set forth in subparagraphs (A) and (B) of this paragraph. Such hearing shall be begun within thirty days after the filing of such petition, and shall be completed within thirty days after it is begun. Should the board for any reason fail to hold such hearing, the Housing Expediter, upon notice of that fact given by such group, shall (unless he finds that the petition is not substantial in character) hold a public hearing in like manner on such matters. Such hearing shall be begun within thirty days after the giving of such notice by such

group, and shall be completed within thirty days after it is begun. If the Housing Expediter finds that such petition is not substantial in character, such group may file a complaint with the Emergency Court of Appeals within thirty days after the date such finding is made. Thereupon, if it finds that the Housing Expediter's finding is not in accordance with law, the Emergency Court of Appeals shall have jurisdiction to enter, within thirty days after the date of filing of such complaint, an order directing the Housing Expediter to hold such hearing. If a hearing is held by either the board or the Housing Expediter, a recommendation by the board of decision by the Housing Expediter, as the case may be, on the merits of the matter shall be rendered within thirty days from the date of completion of such hearing, and the local board forthwith shall forward its recommendation to the Housing Expediter. Any local board may make such recommendations to the Housing Expediter as it deems advisable with respect to the following matters:

(A) Removal of any or all maximum rents in the area, or any portion thereof, over which the local board has jurisdiction, or with respect to any class of housing accommodations with such area or any portion thereof, if in the judgment of the local board the need for continuing maximum rents in such area or portion thereof or with respect to such class of housing accommodations no longer exists, due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met; and

(B) Adjustments, other than individual adjustments, in maximum rents in such area or any portion thereof or with respect to any class of housing accommodations within such area or any por-

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tion thereof, deemed by the local board to be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title; and

(C) Operations generally of the local rent office with particular reference to hardship cases.

(2) The Housing Expediter shall furnish the local boards suitable office space, stenographic assistance and reporting services for public hearings (including attendance fees) and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense-rental areas which may be requested by such boards.

(3) Upon receipt of any recommendation from a local board, the Housing Expediter shall promptly notify the local board, in writing, of the date of his receipt of such recommendation. Except as provided hereinafter in this subsection, within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropriate action shall promptly be taken to carry such recommendation into effect. If the Housing Expediter approves or disapproves any recommendation of a local board he shall promptly notify the local board in writing of such action.

(4) For the purposes of paragraph (3) any recommendation of a local board as to a matter referred to in paragraph (1) (A) or (B) shall be deemed to be appropriately substantiated and in accordance with

applicable law and regulations, and shall be carried into effect as hereinafter provided—

(A) if the local board held a public hearing on such matter at which interested persons (including representatives of the State and of political subdivisions thereof) were given a reasonable opportunity to be heard, by pleadings or otherwise, with right to be represented by counsel;

(B) if notice of the date, time, place, and purpose of such hearing was given (i) in writing to the Governor of the State not less than fifteen days prior to such date, and (ii) by publication in a newspaper of general circulation in the area over which the local board has jurisdiction at least fifteen days prior to such date, and a second notice was given by publication in such a newspaper at least five days prior to such date;

(C) if a copy of the local board's recommendation was filed with the Governor of the State within five days after such recommendation was mailed to the Housing Expediter;

(D) if a record is made of the evidence adduced at the public hearing held by the local board, and the local board certifies and transmits to the Housing Expediter, with such recommendation, a transcript of such record, or of those parts of such record, upon which its recommendation is based and a written statement of its findings made upon the basis of such record; and

(E) if the record so certified and transmitted to the Housing Expediter contains adequate and substantial evidence to support the findings and recommendation of the local board.

Any representative group of interested parties or the local board may file a complaint concerning such recommendation with the Emergency Court of Appeals within thirty days after the date on which the

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Housing Expediter notifies the local board of his decision, or the date of the expiration of such thirty-day period, as the case may be. If the Housing Expediter holds the hearing, such group may file a complaint with the Emergency Court of Appeals within thirty days after the rendering of his decision, or within thirty days after the expiration of the time within which his decision should be made. A similar right of appeal shall be afforded in the event the Housing Expediter makes a decision as to a general adjustment or as to removal of maximum rents for any class of housing accommodations (other than for luxury housing accommodations under the second sentence of section 204 (c)) on his own initiative. The Clerk of the Emergency Court of Appeals shall notify the Housing Expediter in writing of the filing of any such complaint promptly after it has been so filed. Within fifteen days after the receipt of such notice by the Housing Expediter, the Housing Expediter shall file such recommendation or decision in the Emergency Court of Appeals, together with the record and statement of findings of the local board or of the Housing Expediter and such statement as the Housing Expediter may desire to make as to his views on the matter. The statement of the Housing Expediter may be accompanied by such supporting information as the Housing Expediter deems appropriate. Thereupon, the Emergency Court of Appeals shall have jurisdiction to enter, within sixty days after the date of its receipt of such recommendation or decision from the Housing Expediter (or within such additional period of not more than thirty days as the court may find necessary in exceptional cases), an order approving or disapproving the recommendation of the local board or decision of the Housing Expediter. The recommendation, record, and statement of findings of the local board or decision, record, and statement of findings of the Housing Expediter,

as the case may be, together with the statement and supporting information filed by the Housing Expediter, shall constitute the record before the court. If the court determines that the recommendation or decision is not in accordance with law, or that the evidence in the record before the court, including such additional evidence as may be adduced before the court, is not of sufficient weight to justify such recommendation or decision, the court shall enter an order disapproving such recommendation or decision; otherwise it shall enter an order approving such recommendation or decision. The judgment and decree of the court shall be final. The powers heretofore granted by law to the Emergency Court of Appeals are hereby continued for purposes of exercise of the jurisdiction granted by this subsection. The court shall prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction, under this paragraph. The Housing Expediter, the local board, representative groups of interested parties, and representatives of the State or States involved, shall be granted, to the extent determined by the court, an opportunity to be heard, by pleadings or otherwise, with right to be represented by counsel.

(5) Any recommendation to which paragraph (4) applies, if an order of disapproval thereof has not been entered by the Emergency Court of Appeals within the time prescribed in such paragraph, shall be carried out by the Housing Expediter—

(A) if it is with respect to a matter referred to in paragraph (1) (A), so that the decontrol is effected, retroactively if necessary, on the date recommended by the local board, but not before sixty days after the date of the receipt of such recommendation by the Housing Expediter: *Provided*, That during the period of ninety days beginning with the date on which such decontrol is effected,

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the regulations and orders with respect to practices relating to the recovery of possession of housing accommodations issued under section 209 of this title shall be in effect as though such decontrol had not been effected; and

(B) if it is with respect to a matter referred to in paragraph (1) (B), so that the adjustment in maximum rents is effected, retroactively if necessary, on the date recommended by the local board, but not before thirty days after the receipt of the recommendation by the Housing Expediter.

(6) In addition to employees furnished under paragraph (2), local boards are hereby authorized to employ such attorneys as may be necessary for purposes of hearings and court proceedings under this subsection. Attorneys shall be paid not to exceed $25 per day when actually employed, and shall be allowed necessary travelling and subsistence expenses.

(7) Immediately upon the enactment of the Housing and Rent Act of 1948 the Housing Expediter shall communicate with the Governors of the several States advising them of the provisions of this subsection as amended and of the number and location of defense-rental areas in their respective States and the areas or portions thereof in which boards are to be appointed therein, and requesting the cooperation of the Governors of the several States in carrying out such provisions.

(f)[6] The provisions of this title shall cease to be in effect at the close of June 30, 1950, or upon the date of

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[6] This subsection was amended by section 203 (g), Public Law 31, 81st Congress, to read as provided above. Prior to such amendment and as amended by section 202 (e), Public Law 464, 80th Congress, this subsection read as follows:

"SEC. 204 (f) The provisions of this title shall cease to be in effect at the close of March 31, 1949."

The original subsection was amended by section 2, Public Law 422, 80th Congress, to substitute "at the close of March 31, 1948" for "on February 29, 1948." The original subsection read as follows: "SEC. 204 (f) The provisions of this title shall cease to be in effect on February 29, 1948."

a proclamation by the President or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this title is not necessary because of the existence of an emergency, whichever date is the earlier; except that as to rights or liabilities incurred prior to such termination date, the provisions of this title and regulations, orders, and requirements thereunder shall be treated as still remaining in force for the purpose of sustaining any proper suit or action with respect to any such right or liability.

(g)[7] Nothing in this title shall be interpreted or construed to authorize the Housing Expediter to prohibit, in the case of any rental agreement hereafter entered into, the demand, collection, or retention of a security deposit, if said deposit does not exceed the rent for one month in addition to the otherwise authorized collection of rent in advance, if the demand, collection, or retention of such a security deposit was an accepted rental practice, prior to January 30, 1942, in the area in which the premises are located, or was customarily required before that date by the same landlord in the renting of the particular housing accommodations involved, and if the tenant is allowed, under the terms of the rental agreement, to occupy the premises for the period covered by the security deposit without further payment of rent.

(h)[8] For controlled housing accommodations which were not included within the definition of "controlled housing accommodations" as such definition read prior to the effective date of the Housing and Rent Act of 1949, the maximum rent shall be the maximum rent last in effect for such housing accommodations under Fed-

[7] This subsection was added by section 202 (f), Public Law 464, 80th Congress.
[8] This subsection was added by Section 203 (h), Public Law 31, 81st Congress.

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eral rent control, plus or minus applicable adjustments; or, if no maximum rent was ever in effect for such housing accommodations, the maximum rent shall be the rent generally prevailing in the defense-rental area for comparable controlled housing accommodations within such area, plus or minus applicable adjustments: *Provided,* That in the case of those controlled housing accommodations in hotels which were not included within the definition of "controlled housing accommodations" as such definition read prior to the effective date of the Housing and Rent Act of 1949, the maximum rent shall be the rent in effect for such accommodations on March 1, 1949.

(i)* (1) Whenever a local advisory board in any defense-rental area in which maximum rents were never regulated under the Emergency Price Control Act of 1942, as amended, after having determined, with respect to the area over which it has jurisdiction or any portion thereof, either that (A) a scarcity of rental housing has developed as a result of national defense activity, or (B) employment or other conditions have changed to such an extent as to make the supply of rental housing inadequate to meet the demand, or (C) rents have increased or are about to increase unreasonably, recommends that such action is necessary or appropriate in order to effectuate the purposes of this title, the Housing Expediter, if such recommendation is appropriately substantiated, shall by regulation or order establish such maximum rent or maximum rents for any housing accommodations (except those not included within the definition of "controlled housing accommodations") in such area or portion thereof as in his judgment will be fair and equitable. In establishing any maximum rent for any housing accommoda-

*This subsection was added by section 203 (h), Public Law 31, 81st Congress.

tions under this paragraph, the Housing Expediter shall give due consideration to the rents prevailing for such housing accommodations, or comparable housing accommodations, on such date as he deems appropriate, not earlier than the date of the enactment of the Housing and Rent Act of 1949, and he shall make adjustment for such relevant factors as he shall determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs within such defense-rental area. For the purposes of this paragraph the term "defense-rental area" means any part of an area designated under the provisions of the Emergency Price Control Act of 1942, as amended, prior to March 1, 1947, as an area where defense activities have resulted or threaten to result in an increase in the rent for housing accommodations inconsistent with the purposes of such Act.

(2) Whenever a local advisory board in any defense-rental area in which housing accommodations were decontrolled by administrative action taken, prior to the date of the enactment of the Housing and Rent Act of 1949, under the Emergency Price Control Act of 1942, as amended, or under this title, after having determined with respect to the area over which it has jurisdiction, or any portion thereof, either that (A) a scarcity of rental housing has developed as a result of national defense activity, or (B) employment or other conditions have changed to such an extent as to make the supply of rental housing inadequate to meet the demand, or (C) rents have increased or are about to increase unreasonably, recommends that such action is necessary or appropriate in order to effectuate the purposes of this title, the Housing Expediter, if such recommendation is appropriately substantiated, shall by regulation or order reestablish maximum rents for

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any or all such housing accommodations in such area or portion thereof. For the purposes of this paragraph the term "defense-rental area" has the meaning assigned to such term in paragraph (1) of this subsection.

(3) Any local advisory board may recommend to the Housing Expediter that he exercise the authority granted to him by paragraph (4) of this subsection to reestablish maximum rents for any or all housing accommodations, within the defense-rental area over which such board has jurisdiction, which are decontrolled on or after the date of the enactment of the Housing and Rent Act of 1949, by administrative action taken under this title.

(4) The Housing Expediter, upon recommendation of a local advisory board or upon his own initiative, whenever in his judgment such action is necessary or proper in order to effectuate the purposes of this title, may by regulation or order reestablish maximum rents for any or all controlled housing accommodations, in any defense-rental area, which are decontrolled on or after the date of the enactment of the Housing and Rent Act of 1949, by administrative action taken under this title.

(5) In the case of housing accommodations for which a maximum rent is reestablished pursuant to paragraph (2) or (4) of this subsection, the maximum rent shall be the maximum rent last in effect for such housing accommodations under Federal rent control, plus or minus applicable adjustments; or, if no maximum rent was ever in effect for such housing accommodations, the maximum rent shall be the rent generally prevailing for comparable controlled housing accommodations within such area, plus or minus applicable adjustments.

(6) No maximum rents shall be established or reestablished under this subsection for any housing accommodations (A) in the case of which maximum rents have been heretofore or are hereafter removed as the result of approval by the Emergency Court of Appeals of a recommendation of a local advisory board or as the result of approval by such court of a decision of the Housing Expediter, or (B) in any State, city, town, village, or locality in which rent controls under this title have been terminated pursuant to section 204 (j).

(j)[10] (1) Whenever the governor of any State advises the Housing Expediter that the legislature of such State has adequately provided for the establishment and maintenance of maximum rents, or has specifically expressed its intent that State rent control shall be in lieu of Federal rent control, with respect to housing accommodations within defense-rental areas in such State and of the date on which such State rent control will become effective, the Housing Expediter shall immediately make public announcement to the effect that he has been so advised. At the same time all rents controls under this Act, as amended, with respect to housing accommodations within such State shall be terminated as of the date on which State rent control is to become effective. As used in this subsection, the term "State" means any State, Territory, or possession of the United States.

(2) If any State by law declares that Federal rent control is no longer necessary in such State or any part thereof and notifies the Housing Expediter of that fact, the Housing Expediter shall immediately make public announcement to the effect that he has

[10] This subsection was added by section 203 (h), Public Law 31, 81st Congress.

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been so advised. At the same time all rent controls under this act, as amended, with respect to housing accommodations within such State or part thereof shall be terminated on the fifteenth day after receipt of such advice. As used in this subsection, the term "State" means any State, Territory, or possession of the United States.

(3) The Housing Expediter shall terminate the provisions of this title in any incorporated city, town or village upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after 10 days' notice, that there no longer exists such a shortage in rental housing accommodations as to required rent control in such city, town or village: *Provided, however,* That such resolution is first approved by the Governor of the State before being transmitted to the Housing Expediter: *And provided further,* That where the major portion of a defense-rental area has been decontrolled pursuant to this paragraph (3), the Housing Expediter shall decontrol any unincorporated locality in the remainder of such area.

SEC. 206[11] (a) It shall be unlawful for any person to demand, accept or receive any rent for the use or

[11] This section was amended by section 205, Public Law 31, 81st Congress, to read as provided above. Prior to such amendment and as amended by section 203, Public Law 464, 80th Congress, this section read as follows:

"SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204 or otherwise to do or omit to do any act in violation of any provision of this title.

"(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this title, he may make application to any Federal, State, or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such provision, and upon a

Continued on page 48

occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204, or otherwise to do or omit to do any act, in violation of this Act, or of any regulation or order or requirement under this Act, or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any regulation or order issued thereunder, the United States may make application to any Federal, State, or Territorial court of competent jurisdiction for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Footnote 11 continued
showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

The original section read as follows:

"SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

"(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

SEC. 209[12] Whenever in the judgment of the Housing Expediter such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices or renting or leasing

[12] This section was amended by section 206, Public Law 31, 81st Congress, to read as provided above. Prior to such amendment and as amended by section 204, Public Law 464, 80th Congress, this section read as follows:

"SEC. 209. (a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled unless—

"(1) under the law of the State in which the action or proceeding is brought the tenant is (A) violating the obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or an obligation to surrender possession of such housing accommodations) or (B) is committing a nuisance in such housing accommodations or using such housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes;

"(2) the landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations, or for the immediate and personal use and occupancy as housing accommodations by a member or members of his immediate family, or, in the case of a landlord which is an organization exempt from taxation under section 101 (6) of the Internal Revenue Code, or the immediate and personal use and occupancy as housing accommodations of members of its staff: *Provided*, That in the case of housing accommodations in a structure or premises owned or leased by a cooperative corporation or association no action or proceeding under this paragraph or paragraph (3) to recover possession of any such housing accommodations shall be maintained unless stock in the cooperative corporation or association has been purchased by persons who are then stockholder tenants in occupancy of at least 65 per centum of the dwelling units in the structure or premises and are entitled by reason of stock ownership to proprietary leases of dwelling units in the structure or premises; but this proviso shall not apply where such corporation or association acquires or leases such structure or premises after the effective date of the Housing and Rent Act of 1948 pursuant to a contract entered into prior to such date;

"(3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;

"(4) the landlord seeks in good faith to recover possession of such housing accommodations (A) for the immediate purpose of substantially altering or remodeling the same for continued use as housing accommodations, or for the immediate purpose of conversion into additional housing accommodations, and the altering, remodeling, or conversion cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be required by

Continued on page 50

practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result in rent increases inconsistent with the purposes of this Act.

Footnote 12 continued
Federal, State, or local law for the alterations, remodeling, or any conversion planned, or (B) for the immediate purpose of demolishing such housing accommodations;

"(5) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such; or

"(6) the housing accommodations have been acquired by a State of any political subdivision thereof for the purpose of making a public improvement and are rented temporarily pending the construction of such improvement.

"(b) Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided*, That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities, exceeds the allowable maximum.

"(c) No tenant shall be obliged to surrender possession of any housing accommodations pursuant to the provisions of paragraph (2), (3), (4), (5), or (6) of subsection (a) until the expiration of at least sixty days after written notice from the landlord that he desires to recover possession of such housing accommodations for one of the purposes specified in such paragraphs."

The original section read as follows:

"SEC. 209. (a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled unless—

"(1) under the law of the State in which the action or proceeding is brought the tenant is (A) violating the obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or an obligation to surrender possession of such housing accommodations) or (B) is committing a nuisance in such housing accommodations or using such housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes;

"(2) the landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations;

"(3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;

Continued on page 51

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SEC. 303. If any provision of this Act, or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the Act, and the applicability of such provision to other persons or circumstances, shall not be affected thereby.

Footnote 12 continued

"(4) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of substantially altering, remodeling, or demolishing them and replacing them with new construction, and the altering or remodeling is reasonably necessary to protect and conserve the housing accommodations and cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be required by Federal, State, or local law for the alterations, remodeling, or any construction planned; or

"(5) the housing accommodations are nonhousekeeping, furnished housing accommodations located within a single dwelling unit not used as a rooming or boarding house and the remaining portion of which is occupied by the landlord or his immediate family.

"(b) Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided*, That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities exceeds the allowable maximum."

In the District Court of the United States
For the Northern District of Illinois
Eastern Division

UNITED STATES OF AMERICA, *Plaintiff*, vs. SHORELINE COOPERATIVE APARTMENTS, INC., a corporation, *et al.*, *Defendants.*	Civil Action No. 48 C 1023

Statement Directing Attention of Defendants to Provisions of Paragraph 3, Rule 12 of the Rules of the Supreme Court of the United States

Pursuant to Rule 12(2) of the Rules of the Supreme Court of the United States, as amended, the United States of America, plaintiff herein, hereby directs the attention of the defendants, and each of them, in the above entitled cause of action, to the provisions of Paragraph 3 of Rule 12 of said Rules. Said Paragraph 3 of Rule 12 is in words and figures as follows, to-wit:

> "Within 15 days after such service the appellee may file with the clerk of the court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this court asserted by the appellant. There may be included in, or filed with, such opposing statement, a mo-

tion by appellee to dismiss or affirm. Where such a motion is made, it may be opposed as provided in Rule 7, paragraph 3."

Dated at Chicago, Illinois this 23d day of August, 1949.

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In the Supreme Court of the United States

OCTOBER TERM, 1949

UNITED STATES OF AMERICA, APPELLANT

v.

SHORELINE COOPERATIVE APARTMENTS, INC., A CORPORATION; J. M. NICHOLSON; ROBERT R. LUMSDEN; NATHAN SUCHERMAN; MILTON TIRSLEY; FRANK FERRARO; HELEN FERRARO; JOHN J. CHALMERS; SAMUEL SILVERMAN; ARTHUR J. CASEY; MAURICE LIPKIN; CHARLES E. KOCH; CHARLES H. BRANDT; CLIFFORD CULLODEN; JEROME A. CUTLER; HARRY TARLER; EUGENE B. FEINGOLD; HERBERT S. KOHN AND IRVING KALLICK

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the District Court (R. 9) has been reported in 84 F. Supp. 660.

JURISDICTION

The judgment of the District Court was entered July 26, 1949 (R. 19). The petition for appeal was

filed on August 23, 1949, and the appeal was allowed on August 23, 1949 (R. 21). Probable jurisdiction was noted by this Court on October 17, 1949. The jurisdiction of this Court is conferred by Section 1252 of Title 28 of the United States Code (Act of June 25, 1948, c. 646, 62 Stat. 928, 28 U.S.C. 1252).

QUESTIONS PRESENTED

The primary questions presented are:

1. Whether the "local option" provisions of Section 204(j) of the Housing and Rent Act, as amended in 1949, unconstitutionally delegate the legislative power of Congress to state and local officials.

2. Whether Section 204(j) is separable from the remainder of the Act.

Appellees are also urging, by way of defense, additional constitutional objections to the statute, of which the principal are:

3. Whether the Housing and Rent Act of 1949 is a constitutional exercise of the war powers of Congress or a violation of the Tenth Amendment.

4. Whether the statute violates the Fifth Amendment for a variety of reasons.

5. Whether the statute contains an invalid delegation to the Housing Expediter.

STATUTE AND REGULATION INVOLVED

Section 204(j) of the Housing and Rent Act of 1949, Public Law 31, 81st Cong., 1st sess., March 30, 1949, the statutory provision principally involved in this case, is printed at pp. 4-5, *infra*. Printed

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copies of the entire statute are attached at the end of this brief.

The Housing and Rent Act of 1947, 61 Stat. 193, 50 U.S.C. App., Supp. II, 1881 *et seq.*, was enacted on June 30, 1947, and became effective July 1, 1947. The 1947 Act was amended and extended by the Housing and Rent Act of 1948, Public Law 464, 80th Cong., 2d sess., March 30, 1948, and by the Housing and Rent Act of 1949. The Act, as amended, expires on June 30, 1950.

The Housing and Rent Act of 1947 fixed maximum rents in those areas which on March 1, 1947, were under rent control pursuant to the Emergency Price Control Act of 1942 (50 U.S.C. App. 901, *et seq.*). Such rents were those in effect on June 30, 1947, and the Act forbade the demand for or receipt of rents in excess thereof (Sec. 204(b)). Local Rent Advisory Boards were provided which could recommend decontrol to the Housing Expediter, and the Housing Expediter was authorized on his own initiative to remove controls when the demand for housing accommodations was sufficiently met (Sec. 204(c), (e)). Specific grounds for eviction were prescribed (Sec. 209).

The 1948 Act gave Local Advisory Boards greater authority and provided for appeals to the Emergency Court of Appeals from disapproval by the Housing Expediter of their recommendations for decontrol (Sec. 204(c), (e)). The 1949 Act amplified the field of action of the Local Advisory Boards, and added Section 204(j), contain-

ing "local option" provisions for decontrol. Section 204(j) provides for a termination of federal rent control under the following conditions:

> (1) Whenever the governor of any State advises the Housing Expediter that the legislature of such State has adequately provided for the establishment and maintenance of maximum rents, or has specifically expressed its intent that State rent control shall be in lieu of Federal rent control, with respect to housing accommodations within defense-rental areas in such State and of the date on which such State rent control will become effective, the Housing Expediter shall immediately make public announcement to the effect that he has been so advised. At the same time all rent controls under this Act, as amended, with respect to housing accommodations within such State shall be terminated as of the date on which State rent control is to become effective. As used in this subsection, the term "State" means any State, Territory, or possession of the United States.
>
> (2) If any State by law declares that Federal rent control is no longer necessary in such State or any part thereof and notifies the Housing Expediter of that fact, the Housing Expediter shall immediately make public announcement to the effect that he has been so advised. At the same time all rent controls under this act, as amended, with respect to housing accommodations within such State or part thereof shall be terminated on the fifteenth day after receipt of such advice. As

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used in this subsection, the term "State" means any State, Territory, or possession of the United States.

(3) The Housing Expediter shall terminate the provisions of this title in any incorporated city, town or village upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after 10 days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village: *Provided, however,* That such resolution is first approved by the Governor of the State before being transmitted to the Housing Expediter: *And provided further,* That where a major portion of a defense-rental area has been decontrolled pursuant to this paragraph (3), the Housing Expediter shall decontrol any unincorporated locality in the remainder of such area.

The 1949 Act also contains a separability section —reading as follows:

Sec. 303. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the Act, and the applicability of such provision to other persons or circumstances, shall not be affected thereby.

Suits under the 1949 Act were to be brought in the name of the United States of America (Sec.

206(b)). Specific grounds for eviction were no longer set forth in the Act, but were to be established by the Housing Expediter by appropriate regulation (Sec. 209). Pursuant to the Act the Housing Expediter issued Rent Regulations (14 F. R. 1571, as amended 5711), which require a landlord to apply to the Area Rent Office for a certificate of occupancy where he seeks to evict tenants for purposes of selling the housing accommodations.

STATEMENT

Section 209(a)(2) of the Housing and Rent Act before the 1949 amendments made it unlawful, upon the sale of housing accommodations to a co-operative, to evict any tenants in the housing accommodations involved unless there was a participation of 65% of the tenants in occupancy in the co-operative.[1] The present action was instituted by the Housing Expediter to enjoin the defendant, Shoreline Cooperative Apartments, Inc., from violating this provision of the Act by evicting tenants of a cooperatively owned apartment house when less than 65% of the stockholders were tenants in

[1] ". . . *Provided*, That in the case of housing accommodations in a structure or premises owned or leased by a cooperative corporation or association no action or proceeding under this paragraph or paragraph (3) to recover possession of any such housing accommodations shall be maintained unless stock in the cooperative corporation or association has been purchased by persons who are then stockholder tenants in occupancy of at least 65 per centum of the dwelling units in the structure or premises and are entitled by reason of stock ownership to proprietary leases of dwelling units in the structure or premises;" [Sec. 209(a)(2) P. L. 464, 80th Cong., 2d sess.]

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occupancy. The other defendants were purchasers of stock who desired possession of the apartments (R. 5). While the suit was pending, the 1949 Act was adopted, effective April 1, 1949. A supplemental complaint was filed substituting the United States as plaintiff, and seeking to enjoin violations of Section 209 of the amended Act and the Regulations issued pursuant thereto which, insofar as pertinent here, continued in effect the substance of the provisions of the 1948 statute [2] (R. 1-7). The defendants filed motions to dismiss the complaint on the grounds that the complaint failed to state a cause of action upon which relief could be granted, and that Section 209 was void because it violated the constitutional rights of the defendants (R. 8-9).

The District Court dismissed the complaint, holding that Section 204(j) of the Housing and Rent Act of 1949 (which was not directly involved

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[2] The pertinent provision of the regulation provides (14 F.R. 5711, 5720):

> In the case of housing accommodations in a structure or premises owned by a cooperative corporation or association, no certificate shall be issued by the Expediter to a purchaser of stock or other evidence of interest in such cooperative, who is entitled by reason of such ownership of stock or other evidence of interest to possession of such housing accommodations by virtue of a proprietary lease or otherwise, unless stock or other evidence of interest in the cooperative has been purchased by persons who are tenants in occupancy of at least 65 percent of the housing accommodations in the structure or premises and are entitled by reason of such ownership to proprietary leases of housing accommodations in the structure or premises; [Section 825.6(c)(1)(b), issued September 1, 1949].

in this case) was an unconstitutional delegation of power by Congress, and that since Congress would not have passed the 1949 Act without Section 204(j), the separability clause (Sec. 303 of the 1949 Act), was ineffective to justify the operation of the Act without Section 204(j). The entire Act was thus held unconstitutional (R. 9-18).

SUMMARY OF ARGUMENT

I

A. Section 204(j) of the Housing and Rent Act of 1949 does not contain an invalid delegation of federal legislative power to state offices. In the first place, the standards contained in the three paragraphs of Section 204(j) are sufficiently definite and intelligible. In the main they require a finding that rent control is no longer necessary in a particular area, not substantially different from that sustained by this Court in *Woods* v. *Miller Co.*, 333 U. S. 138. The provision in the first paragraph for substitution of state for federal rent control provides an intelligible guide to the content of the state statute which is to replace the federal. But this provision is constitutional apart from the doctrine of delegation. It constitutes a relinquishment to the states of authority over a subject over which they have at least concurrent power, and thus is clearly valid under the principle of *Prudential Insurance Co.* v. *Benjamin*, 328 U. S. 408.

B. 1. The fact that the delegation is to state and local officials does not render it unconstitutional.

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Since the beginning of the Government, Congress has frequently relied upon state legislative, judicial and administrative agencies in the administration of federal statutes. These examples of intergovernmental cooperation have uniformly been upheld. See especially *United States* v. *Jones,* 109 U. S. 513, 519; *Amy* v. *Watertown (No. 1),* 130 U. S. 301, 303-304; *Butte City Water Co.* v. *Baker,* 196 U. S. 119. In recent years, this Court has upheld statutes which provide that certain administrative orders should become effective only after approval by two-thirds of the persons who would be subjected to them. *Currin* v. *Wallace,* 306 U. S. 1, 15-16; *United States* v. *Rock Royal Co-Op.,* 307 U. S. 533, 577-578. Congress must have as much power to entrust a determination upon which depends the operation of a federal scheme to the vote of responsible elected officials of a state or locality as to the vote of interested private citizens.

2. The principle underlying the cases sustaining various types of delegations to state and local officials transcends the doctrine of delegation. In a federated system such as ours, cooperative adjustments between state and federal governments are to be favored. This is particularly true in a situation like that at bar, in which Congress is seeking in a responsible fashion gradually to return to the states control over a subject which Congress is regulating under its emergency war powers. In dealing with such a problem it was clearly rea-

sonable, and not unconstitutional, for Congress to rely upon the state and local officials to determine the needs of the local communities, and to permit the substitution of state for federal rent control when an adequate state statute was enacted.

II

Even if Section 204(j) were unconstitutional, the remainder of the Housing and Rent Act would not fall. The invalidity of parts of a law will not affect the remainder if the valid provisions are capable of being given legal effect standing alone, and if the legislature would have intended them to stand with the invalid provisions stricken. *Electric Bond & Share Co.* v. *Securities and Exchange Commission,* 303 U. S. 419. Here unquestionably, the remainder of the Housing and Rent Act can operate effectively without Section 204(j). The statute contains a variety of other decontrol and termination clauses. The intention of Congress that the statute shall be separable is explicitly stated in the separability clause. This establishes that the statute is not to be treated as "an integrated whole", and that "when validity is in question, divisibility and not integration is the guiding principle". *Electric Bond & Share* case, 303 U. S., at 434.

Nothing in the language or history of the Housing and Rent Act establishes that Congress had an intention contrary to that expressed in the separa-

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bility clause. The most that can be said is that a number of members of Congress who voted for the bill might not have done so in the absence of Section 204(j), and that conceivably this group, combined with those who opposed Section 204(j) but otherwise favored the bill, were necessary to constitute a majority. But this does not mean that a majority of Congress would wish the statute to fall as a whole if Section 204(j) were found to be unconstitutional.

III

Other constitutional objections raised by appellees in which it is contended that the Act is not warranted under the war powers, that the Act violates the Due Process Clause in various ways, and that it contains an unconstitutional delegation to the Housing Expediter are clearly lacking in merit.

IV

The case is not moot by reason of appellees' claim, that 65% of the tenants in occupancy have now joined the cooperative. This is contested by the tenants sought to be evicted. The hearing and possible appeal before the administrative agency will take approximately four months before the final administrative decision is reached. If the statute is unconstitutional, appellees are entitled to evict the tenants immediately.

ARGUMENT

I

Section 204(j) Is Constitutional

Introductory Analysis

The decision below holding the Housing and Rent Act unconstitutional has already been rejected by six other district courts.[3] We shall show that the decision is in every respect in conflict with principles repeatedly affirmed by this Court—not only because Section 204(j) is constitutional, but because it is just as clearly severable from the remainder of the statute.

The court below treated the case as governed by the usual principles with respect to the delegation of legislative powers. Section 204(j), we submit, clearly satisfies these tests. But its validity should not depend upon the application of the delegation doctrine. Although in form a delegation, the section is in reality an answer to a practical problem in intergovernmental relations—how the United States should turn back to the States a subject

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[3] *United States* v. *Emery*, 85 F. Supp. 354 (S.D. Cal.); *United States* v. *Resch*, 85 F. Supp. 389 (W.D. Ky.); *United States* v. *Bize* (D. Neb.), No. 39-49, decided September 2, 1949; *United States* v. *Fireman* (N.D. Cal.), No. 28920-G, decided September 14, 1949; *United States* v. *Crenshaw* (D. Mont.), No. 444, decided September 28, 1949; *Shimek* v. *Woods* (D. D.C.) Civ. Action No. 3664-49, decided November 1, 1949 (three-judge court). Without specific reference to the *Shoreline* decision, on August 1, 1949, Judge Atwell in *United States* v. *Cox* (N.D. Tex.), No. 3687, overruled a motion to dismiss based upon the alleged invalidity of Section 204(j).

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which, apart from the war emergency, normally would be a matter for state rather than federal control. The consequences of the housing deficit resulting from the war (see *Woods* v. *Miller Co.*, 333 U. S. 138, 142-144) will not abate at an even pace throughout the nation. The need for continued federal control in any area will depend not only upon the re-creation of a balance between the supply and demand for housing, but also upon whether the state or local government is willing to undertake the function of rent control.

In *Woods* v. *Miller Co.* the Court refused to assume that Congress would not be "alert to its constitutional responsibilities" (p. 144) in determining when this exercise of the war powers should be terminated. Section 204(j) is one of the methods adopted by Congress in order to reconcile the national interest in not removing the wartime controls more swiftly than the facts justified with our constitutional structure by which such matters as rent regulation normally come within the field reserved to the states. The Section should be held valid if it is a reasonable method of dealing with this practical problem.

It would have been entirely lawful for Congress to have asserted that federal rent control should terminate in any area in which state controls were established. That would not be a delegation of federal legislative power to the states, but a withdrawal of federal control from a field in which the states have, at the least, concurrent authority.

Prudential Insurance Co. v. *Benjamin,* 328 U. S. 408, *In re Rahrer,* 140 U. S. 545, and *Whitfield* v. *Ohio,* 297 U. S. 431, uphold such a withdrawal of federal authority over interstate commerce, a field in which federal power is paramount. A relinquishment of power over rents to the States would seem even more clearly justifiable under our constitutional framework. That, in substance, is all that Section 204(j)(1), in particular, does.

But even if Section 204(j) is to be adjudged from the standpoint of delegation of power, it is unquestionably valid. It is neither unconstitutional by reason of inadequacy of its standards or because the delegation is to state rather than to federal officials.

A. The Standards Contained in Section 204(j) Are Adequate

In *Woods* v. *Miller Co.* this Court sustained the lawfulness of the delegation to the Housing Expediter of authority

> . . . to remove any or all maximum rents before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met. [333 U. S. at 141.]

The standard upheld in the *Miller* case is not distinguishable in substance or specificity from

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that contained in Section 204(j)(3) (quoted in full at page 5), which provides that the Housing Expediter shall terminate controls when local authorities, after public hearing and with the approval of the Governor, find that "there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village."

Section 204(j)(2) contains substantially the same standard, though in more general language. It provides for termination of control if a state "by law declares that Federal rent control is no longer necessary in such State or any part thereof." The phrase "no longer necessary", though more terse, obviously requires a judgment as to the relationship between adequacy of housing facilities and the demand therefor, and thus has substantially the same meaning as the provision upheld in the *Miller* case. The word "necessary" contains an intelligible guide to conduct when read in its statutory and factual context. The standard thus is at least as specific as others which this Court has upheld. *Lichter* v. *United States,* 334 U. S. 742, 786, and cases cited. See, especially, *American Power & Light Co.* v. *S.E.C.,* 329 U. S. 90, 104 ("unduly or *unnecessarily* complicate the structure"); *National Broadcasting Co.* v. *United States,* 319 U. S. 190, 225-226 ("public interest, convenience, or *necessity*"); *Radio Commission* v. *Nelson Bros. Co.,* 289 U. S. 266 (same); *Colorado* v. *United States,* 271 U. S. 153 ("public conveni-

ence and *necessity*"); *Chesapeake & Ohio Ry.* v. *United States*, 283 U. S. 35 (same); *New York Central Securities Corp.* v. *United States*, 287 U. S. 12 ("in the public interest"); *United States* v. *Chemical Foundation*, 272 U. S. 1 (same); *Avent* v. *United States*, 266 U. S. 127 (same).

Section 204(j)(1) differs from the two paragraphs just discussed in that it provides for the substitution of state for federal control instead of the termination of control altogether. We have already pointed out (pp. 13-14, *supra*) that this provision in particular is a relinquishment to the states of authority over a subject over which they have at least concurrent power rather than a delegation, and thus clearly valid under the principle of *Prudential Insurance Co.* v. *Benjamin*, 328 U. S. 408. But even as a delegation the paragraph is lawful. It provides:

> (1) Whenever the governor of any State advises the Housing Expediter that the legislature of such State *has adequately provided for the establishment and maintenance of maximum rents*, or has specifically expressed its intent that *State rent control shall be in lieu of Federal rent control*, with respect to housing accommodations within defense-rental areas in such State and of *the date on which such State rent control will become effective*, the Housing Expediter shall immediately make public announcement to the effect that he has been so advised. At the same time all rent controls under this Act, as amended, with respect to housing accommodations within

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such State shall be terminated *as of the date on which State rent control is to become effective.*" [Italics supplied.]

Certainly the first of the two alternative requirements—that the governor advise the Housing Expediter that the legislature "has adequately provided for the establishment and maintenance of maximum rents"—is a sufficient standard. The adjective "adequately" imports the same considerations as have been mentioned in relation to the word "necessity." Other words connoting a judgment as to a matter of degree have often been held to be sufficient. *Lichter* v. *United States,* 334 U. S. at 786 ("*excessive* profits"); *Sunshine Anthracite Coal Co.* v. *Adkins,* 310 U. S. 381, 397-398 ("fair return" or "*fair* value"); *Federal Power Commission* v. *Hope Gas Co.,* 320 U. S. 591, 600-601 ("just and reasonable rates"): *Tagg Bros. & Moorehead* v. *United States,* 280 U. S. 420 (same); cf. *Levy Leasing Co.* v. *Siegel,* 258 U. S. 242, 249-250.

The second alternative is a finding that the state legislature "has expressed its intent that State rent control shall be in lieu of Federal rent control." But it is not sufficient under the statute that the state legislature merely express its intention. For the governor must advise the Housing Expediter "of the date on which such State rent control will become effective", and the Federal control terminates only "as of the date on which State rent control is to become effective." The question of delegation is whether the words "State rent control" have a sufficiently definite meaning.

Clearly in the context of these provisions and of the statute as a whole, and particulaly in view of the statutory requirement that the state control "be in lieu of Federal rent control", there can be no doubt as to this. The "State rent control" contemplated was clearly some method of protecting the public against unduly high rents. Although the method need not in detail be the same as under the Federal plan, the subject is reasonably and intelligently defined in a manner which discloses what Congress intended. Cf. *Fahey* v. *Mallonee,* 332 U. S. 245, in which the word "conservator" in the context of the particular statute was found to import a sufficient standard.

B. The Reliance Upon State and Local Action Does Not Violate the Constitution

1. *Delegation to State Officers is not Unconstitutional.*

Since the beginning of the government Congress has delegated power to state legislatures, courts and administrative officials. The propriety of these statutes has seldom been challenged. The point was considered in *United States* v. *Jones,* 109 U. S. 513, where attack was made upon an act of Congress which delegated to a tribunal created under the laws of a state the power to fix and determine the amount of compensation to be paid by the United States for private property taken by the government in the exercise of its right of eminent domain. The Court there stated (109 U. S. at pp. 519-520):

Yet from the time of its establishment that

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> government has been in the habit of using, with the consent of the States, their officers, tribunals, and institutions as its agents. Their use has not been deemed violative of any principle or as in any manner derogating from the sovereign authority of the federal government; but as a matter of convenience and as tending to a great saving of expense.

As the above quotation states, the federal government has frequently availed itself of the aid of the legislative, judicial and executive arms of the state governments. This case is concerned primarily with the reliance by Congress upon state action in the legislative field.

A familiar and prominent example of Congressional reliance upon state legislative action is the Conformity Act, first enacted in 1789 (1 Stat. 93, R. S. § 914), which provided that the procedure in federal courts in suits at common law should be the same as in the courts of the state in which the federal courts sat. This meant that state legislatures or courts were empowered to enact laws or rules which would be controlling in federal courts. The validity of this "delegation"[4] has always been assumed. See *Wayman* v. *Southard*, 10 Wheat. 1, 39-40; *Amy* v. *Watertown (No. 1)*, 130 U. S. 301, 303-304. See, also, *Hanover National Bank* v. *Moyses*, 186 U. S. 181, in which the validity of the Bankruptcy Law of

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[4] The federal statute did not merely adopt the existing state laws and rules. The federal courts were bound to follow the state practice when embodied in laws enacted after the passage of the federal statute.

1898 was attacked as an attempt by Congress unlawfully to delegate its legislative power because of its recognition of exemptions and other exceptions provided by local laws. Finding no merit to this contention, this Court said (186 U. S. at 190):

> Nor can we perceive in the recognition of the local law in the matter of exemptions, dower, priority of payments, and the like, any attempt by Congress to unlawfully delegate its legislative power. *In re Rahrer, Petitioner,* 140 U. S. 545, 560.

A recent example of the same type of legislation is the Federal Tort Claims Act (28 U.S.C. 2674), which also makes state law applicable to tort claims against the United States.

In *Butte City Water Co.* v. *Baker,* 196 U. S. 119, the Supreme Court was concerned with a federal statute that provided both that the states might legislate with respect to mining claims on public land, and also that such regulations might be made by the miners themselves (pp. 122-123). This Court rejected the argument that there was an unlawful delegation to state legislatures, saying (pp. 125-126):

> It is insisted that the disposal of the public lands is an act of legislative power, and that it is not within the competency of a legislature to delegate to another body the exercise of its power; that Congress alone has the right to dispose of the public lands, and cannot transfer its authority to any state legis-

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lature or other body. The authority of Congress over the public lands is granted by section 3, article IV, of the Constitution, which provides that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States." In other words, Congress is the body to which is given the power to determine the conditions upon which the public lands shall be disposed of. That Nation is an owner, and has made Congress the principal agent to dispose of its property. Is it inconceivable that Congress, having regard to the interests of this owner, shall, after prescribing the main and substantial conditions of disposal, believe that those interests will be subserved if minor and subordinate regulations are entrusted to the inhabitants of the mining district or State in which the particular lands are situated? While the disposition of these lands is provided for by Congressional legislation, such legislation savors somewhat of mere rules prescribed by an owner of property for its disposal. It is not of a legislative character in the highest sense of the term, and as an owner may delegate to his principal agent the right to employ subordinates, giving to them a limited discretion, so it would seem that Congress might rightfully entrust to the local legislature the determination of minor matters respecting the disposal of these lands.

This passage emphasizes the unimportant nature of the authority to be exercised by state legis-

latures, since the statute in question contained no standards in the ordinary sense. But the opinion does not imply that the delegation is questionable because it is to a state legislative body. On the contrary, the Court affirmed (p. 127):

> Now, if Congress has power to delegate to a body of miners the making of additional regulations respecting location, it cannot be doubted that it has equal power to delegate similar authority to a state legislature.

Other cases upholding a federal statute whose operation depends upon existence of particular state laws are *Clark Distilling Co.* v. *Western Md. Ry. Co.*, 242 U. S. 311, 326-327, which sustained the Webb-Kenyon Act forbidding transportation of liquor into a state for use in violation of its laws, and *Kentucky Whip & Collar Co.* v. *Illinois Central R. Co.*, 299 U. S. 334, 352, upholding a similar law with respect to prison made goods. In each case the contention that the reliance upon state law as an ingredient of the federal offense was an invalid delegation of authority to the states was rejected. See, also, *in re Rahrer*, 140 U. S. 545. The Federal Hot Oil statute sustained in *Griswold* v. *President*, 82 F. 2d 1922 (C.A. 5), and the law prohibiting the interstate transportation of game killed in violation of state law (*Rupert* v. *United States*, 181 Fed. 87 (C.A. 8)), are of the same sort.

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Many cases have sustained the lawfulness of the use by the United States of state administrators and judicial officers in carrying out Federal laws. *United States* v. *Jones*, 109 U. S. 513, has already been mentioned. In *Parker* v. *Richard*, 250 U. S. 235, it was objected that it was improper for Congress to require a state probate court rather than a federal agency to approve certain Indian conveyances; this Court upheld the delegation, saying (p. 239):

> It is the agency selected by Congress and the authority confided to it is to be exercised in giving effect to the will of Congress in respect of a matter within its control. Thus in a practical sense the court in exercising that authority acts as a federal agency; and this is recognized by the Supreme Court of the State. *Marcy* v. *Board of Commissioners*, 45 Oklahoma 1. Plainly, the restrictions have the same force and operate in the same way as if Congress had selected another agency, exclusively federal, such as the Superintendent of the Five Civilized Tribes.

Other instances which have come before this Court include *Dallemagne* v. *Moisan*, 197 U. S. 169, 174, which involved the validity of Article 8 of the Consular Convention between the United States and France, a federal treaty, conferring power upon a state officer to enforce the criminal laws of a foreign government; *Holmgren* v. *United States*, 217 U. S. 509, state court jurisdiction and conduct in naturalization proceedings under Sec-

tion 2165 of the Revised Statutes of the United States; *Robertson* v. *Baldwin*, 165 U. S. 275, jurisdiction conferred upon local justices of the peace under Section 4598 of the Revised Statutes of the United States to arrest deserting seamen; *Gambino* v. *United States*, 275 U. S. 310, participation by municipal police in the enforcement of the National Prohibition Act. Familiar illustrations are the draft statutes in the Civil and First World Wars. *Selective Draft Law Cases*, 245 U. S. 366, 389; *Matter of Spangler*, 11 Mich. 298 (1863).

There are, in addition, many other examples of federal use of state officials which have never been contested.[5]

This Court has also in recent years upheld statutes which provide that certain administrative orders should become effective only after approval by farmers in a referendum vote (*Currin* v. *Wallace*, 306 U.S. 1, 15-16; *United States* v. *Rock Royal Co-op.*, 307 U.S. 533, 577-578) as against the contention that this was a delegation of authority to the farmers. These provisions were both negative and affirmative in form. The scheme before the Court in *Wickard* v. *Filburn*, 317 U.S. 111, 115-116, required the Secretary of Agriculture under cer-

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[5] See Koenig, *Federal and State Cooperation under the Constitution*, 36 Mich. L. R. 752, 772-781 (1938); Kauper, *Utilization of State Commissioners in the Administration of the Federal Motor Carrier Act*, 34 Mich. L. R. 37, 46-49 (1935); Mermin, *"Cooperative Federalism" Again: State and Municipal Legislation Penalizing Violation of Existing and Future Federal Requirements*, 57 Yale L. J. 1 (1947).

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tain circumstances to issue a proclamation that a marketing quota would be in effect, but to cancel it unless a two-thirds vote of the farmers in favor thereof was subsequently obtained. *Currin* v. *Wallace, supra,* justifies these provisions for farmers' approval on the ground that there is no delegation of legislative authority but an exercise of federal power subject to the factual condition that one-third of the farmers do not disapprove. The same analysis can be made here, that the federal statute is operative subject to the condition that the state officials had not made the determinations described in Section 204(j). Whether the matter is called a delegation or a condition, Congress must have as much power to entrust a determination upon which depends the operation of a federal scheme, to the vote of responsibly elected officials of a state or locality as to the vote of interested private citizens.[6] Cf. *In re Rahrer,* 140 U. S. 545, 561-562.

We think it clear from this review of various types of delegations to state and local officials, as well as to private citizens, that there is no constitutional doctrine that authority may only be delegated to federal administrative officers. Inasmuch as Congress has under Section 204(j) prescribed intelligible standards for the guidance of state authorities, Congress has no more abdicated its leg-

[6] A case sustaining a delegation to a private association is *St. Louis & Iron Mt. Ry.* v. *Taylor,* 210 U. S. 281, 287, which upheld a statute authorizing the American Railway Association to determine the standard height of drawbars for freight cars.

islative function than in the ordinary case of a delegation to a federal agency.

2. *Relinquishment of control of rents to the states is a method of inter-governmental accommodation favored under our federal system.*

As we have seen, the delegations to state and local officers have taken various forms, which differ in detail both from each other and from that in the Housing and Rent Act. But the delegation has always been held—or assumed—to be constitutional, though sometimes on the basis of reasoning that seems to deny that it was a delegation at all. The underlying principle, however, transcends the doctrine of delegation. In a federated system such as ours, cooperative adjustments between state and federal governments are eminently to be favored. Despite occasional difficulties in rationalization (see *Prudential Insurance Co.* v. *Benjamin,* 328 U.S. 408, 424), such adjustments have always been upheld.

There is a special reason why these principles should govern when Congress is acting in a reasonable fashion gradually to turn back to the states a subject which Congress has found it necessary to control under the war power in time of national emergency. Particularly is there good reason to do so here, since the control of rents normally falls within the police powers of the states, and the need for regulating the subject under the war powers of Congress is not to be regarded as permanent.

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The technique adopted by Congress in Section 204(j) is a method of gradually transferring the subject from federal to state control, as the necessity for federal regulation in the particular state or community diminishes. Unless there is no reasonable basis for the means chosen by Congress to terminate the control under the war powers, they cannot be held unconstitutional (*McCulloch* v. *Maryland*, 4 Wheat. 316, 409-410, 421). In achieving its aims, it was not unreasonable for Congress to rely upon state and local officials to determine the needs of the local communities. Nor was it unreasonable for Congress to permit the substitution of state for federal rent control when an adequate state statute was enacted.

Integration of federal, state and local authority to bring about a gradual and orderly change from emergency controls to peacetime needs may, perhaps, lack precise precedent. But, as this Court has noted in another connection, "The degree of accommodation made by Congress from time to time in the relations between federal and state governments has varied with the subject matter of the legislation, the history behind the particular field of regulation, the specific terms in which the new regulatory legislation has been cast, and the procedures established for its administration" (*Kirschbaum Co.* v. *Walling*, 316 U. S. 517, 520-521).

The method of accommodation chosen by Congress in relinquishing rent control to states was a

reasonable solution to the practical and constitutional problem of how to terminate the emergency controls without undue injury to the citizens protected by them. As such, it cannot be unconstitutional.[7]

II

Section 204(j) Is Separable from the Remainder of the Housing and Rent Act

After holding that Section 204(j) was invalid, the court below considered the question whether the unconstitutionality of Section 204(j) invalidated the entire Act. The determination of that question, the court below said, rested upon a construction of the savings clause, and that in turn depended upon the intention of Congress as expressed in the preamble of the Act and the debates of Congress. Upon reviewing the preamble of the Act and the debates of Congress, the court below concluded

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[7] The court below implied that Section 204(j) was invalid because its effect would be to impede or prevent uniform application of federal rent control throughout the United States. The short answer to this argument is that "the general operation of the law is uniform although it may result in certain particulars differently in different States". *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 190. "So far as uniformity is concerned, there is no question that the act uniformly applies to the conditions which call its provisions into play—that its provisions apply to all the States, —so that the question really is a complaint as to the want of uniform existence of things to which the act applies and not to an absence of uniformity in the act itself". *Clark Distilling Co.* v. *Western Md. Ry. Co.*, 242 U. S. 311, 326-327. Furthermore the war powers, which are as sweeping as the commerce powers, do not restrict Congress "to the making of uniform rules"; this "would be to impose a limitation which the Constitution does not prescribe." *Currin* v. *Wallace*, 306 U. S. 1, 14.

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that "the Act could never have passed without the local option provisions". For that reason, the court below held that the statute was inseparable from the local decontrol provisions, and that the invalidity of Section 204(j) required the holding that the Act was invalid in its entirety.

The well established rule is that the invalidity of part of a law will not affect the remainder (1) if the valid provisions are capable of being given legal effect standing alone; and (2) if the legislature would have intended them to stand with the invalid provisions stricken out. *Dorchy* v. *Kansas*, 264 U.S. 286, 289-290; *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U.S. 419.

1. The Housing and Rent Act unquestionably can operate effectively even if Section 204(j) is stricken as invalid. Prior to the amendments in 1949, containing the local decontrol features, the Act contained a complete system of federal rent control and systematic decontrol which was operative throughout the United States. This system had been in effect not only under the Housing and Rent Act of 1947, as amended in 1948, but also since 1942, under the Emergency Price Control Act of 1942, without the aid of the local decontrol features such as are contained in Section 204(j). In addition, both prior to and after the amendment providing for local decontrol by states and municipalities, the statute conferred authority upon the Housing Expediter, acting on his own initiative, to de-

control rents in any area "if in his judgment the need for continuing maximum rents in such area or portion thereof * * * no longer exists" (Sec. 204(c), as amended, or upon recommendation of the local boards (Sec. 204(e) (3), as amended). It was also provided in the amendment of 1949 that the new statute would terminate of its own force on June 30, 1950, unless the President or Congress earlier so proclaims (Sec. 204(f), as amended). These provisions demonstrate not only that the Act can operate without Section 204(j), but also that apart from that section it contains workable provisions with respect to the termination of controls.

2. The intention of Congress that the statute shall be separable if one of its provisions is declared to be invalid is stated in the severability clause contained in Section 303, which reads as follows:

> If any provision[8] of this Act or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the Act, and the applicability of such provisions to other persons or circumstances, shall not be affected thereby.

The effect of such a clause has been accurately

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[8] Referring to the severability provision of Section 305, (changed to Sec. 303 by the Act of 1949), the court below pointed out that Congress used the word "'provision,' not the plural 'provisions'" (84 F. Supp. at p. 665). Under the rules of construction of federal statutes, however, words importing the singular include and apply to several persons, parties, or things (Title 1, U.S.C. Sec. 1).

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described by Chief Justice Hughes in his dissenting opinion in *Carter* v. *Carter Coal Co.*, 298 U.S. 238, 322, and in his opinion for the Court in *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419, 434. In the *Carter* case, he stated (298 U.S. at 322):

> * * * when Congress states that the provisions of the Act are not inseparable and that the invalidity of any provision shall not affect others, we should not hold that the provisions are inseparable unless their nature, by reason of an inextricable tie, demands that conclusion.

In *Electric Bond & Share Co.* v. *Securities and Exchange Commission, supra*, where the question before this Court was the separability of the registration section of the Holding Company Act, the court said with reference to the separability clause (303 U.S. at p. 434):

> This provision reverses the presumption of inseparability[9]—that the legislature intended

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[9] The so-called presumption of inseparability in the absence of a separability clause, first discovered in *Williams* v. *Standard Oil Co.*, 278 U. S. 235, and referred to by way of dictum in a series of cases, the last of which is the *Electric Bond & Share* case, has no rational or historical foundation. Since separability is fundamentally a matter of legislative intention, the presumption can have justification only if it reflects the manner in which Congress and other legislatures customarily operate. It can only be defended on the ground that legislatures avail themselves of separability clauses whenever they desire the provisions of a law to be separable, and fail to use the device only because they have a contrary intention. But to assume as a fact that legislators omit separability clauses because they intend statutes to fall *in toto* is hardly

> the Act to be effective as an entirety or not at all. Congress has established the opposite presumption of divisibility. * * * Congress has thus said that the statute is not an integrated whole, which as such must be sustained or held invalid. On the contrary, when validity is in question, divisibility and not integration is the guiding principle. Invalid parts are to be excised and the remainder enforced. When we are seeking to ascertain the congressional purpose, we must give heed to this explicit declaration.

Sonzinsky v. *United States,* 300 U.S. 506, 512, and *Carmichael* v. *Southern Coal & Coke Co.,* 301 U.S. 495, 513, properly indicate that such a clause is decisive as to legislative intention, and will be effective so long as the invalid provision is not "essential to the operation of the statute" (*ibid.*).

Fruitful analogy on this score may also be found in *Highland Farms Dairy* v. *Agnew,* 300 U. S. 608, which also involved the separability of a termination clause. In that case, the Virginia Milk and Cream Act created a commission with power to establish market areas, to determine, after hearings, the need for regulation of milk and cream

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consistent with common knowledge as to the workings of the legislative process.

Prior to *Williams* v. *Standard Oil Co.*, the approach was precisely the opposite; it was assumed that statutes were to be held separable so that their valid parts could stand unless the opposite was clearly shown. See Cooley, *Constitutional Limitations*, pp. 180-181 (1868) and sixty-three cases cited in the brief for the United States in *United States* v. *Petrillo*, 332 U. S. 1, (1946 Term No. 954, pp. 143-146). This attitude would clearly seem to be the proper one; the courts should attempt to effectuate rather than to thwart legislative policies.

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prices within each area, and if satisfied of the need, to fix prices accordingly. It was claimed, among other things, that the Act was invalid in its application by reason of the provision for the cancellation of the prices established for a market if requested by a majority of the producers and distributors in the area affected. To this contention, this Court declared that "if a provision so subordinate were at any time to fail, the saving clause in Section 16 would cause the residue to stand." (300 U. S. at p. 614).

Clearly, in view of these principles, Section 204(j) is separable from the remainder of the Act. Construed in its setting, Section 204(j) is no more than a subordinate provision in the new Act, providing an additional method of decontrol. Even if integration were the guiding principle when validity was in question, instead of divisibility (cf. *Electric Bond & Share Co.* v. *Securities and Exchange Commission, supra*), Section 204(j) is not so integral a part of the Act as a whole that a declaration of its invalidity requires the entire Act to fall.

The court below took the position that "from all the sources available, including the debates in Congress, the Act could never have passed without the local option provisions" (R. 17). The court placed principal reliance on the preamble to the Act of 1949. But the preamble is to be found in Sections 201(a) and (b) of the Act of 1947, which are carried forth into the Act of 1949 without change. In brief, the preamble declares that it is the purpose of

Congress to terminate federal controls at the earliest practicable date, and that an emergency still exists requiring the continuation of federal controls. Since the preamble was in existence prior to the enactment of the local decontrol provisions of Section 204(j), we fail to see how any inference may be drawn from it respecting the severability of Section 204(j). The court below also noted that no reference is made in the preamble "to a continuation of the war effort," but obviously, "The question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise" (*Woods* v. *Miller Co.*, 333 U. S. at p. 144).

The legislative history of the 1949 Act, upon which the court also based its conclusion that the Act "could not have passed without the local option provision" does not—apart from the separability clause itself, which passed without discussion—contain any direct reference to the problem of separability. Although the debate indicates that the local decontrol provisions in Section 204(j) were regarded by many members of Congress as important and desirable, 95 Cong. Rec. (Adv. Ed.) 3406, 2982, 2523-2535, 2873-2881, 2981-2986, no member of Congress stated or even implied that the entire Act should fall if those provisions were to be held unconstitutional.

The only statement which even intimates that these provisions were deemed indispensable was that of Senator Maybank, Chairman of the Senate

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Committee, who stated on the floor of the Senate with respect to the bill as reported by the Senate Committee (*id.*, at 2982):

> I wish to point out that I doubt whether we could have reported the bill from the committee if we had not included the provision for State control.

But that is a far cry from a declaration that the committee would not have approved the remainder of the bill if it had known that such a provision could not constitutionally have been included. The bill as reported also contained the separability clause, which expresses a contrary intention.

Analysis of the debates and votes on Section 204(j) indicates that most of the members of Congress who favored the rent legislation opposed the so-called local option provisions, and that, at least in the House, most of those who supported a predecessor to Section 204(j) were opposed to the legislation as a whole.[10] It may or may not be true that sufficient additional votes to pass the bill were ob-

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[10] In the House, the amendment which was the predecessor to Section 204(j) was inserted on the floor by a vote of 227 to 188, 95 Cong. Rec. (Adv. Ed.) 2544. The bill ultimately was approved by the House by a vote of 263 to 143 (*id.*, at 3407). Out of the 263 voting in favor of the bill, 170 had opposed the amendment, 87 had voted for the amendment, and 6 had not voted on the amendment. 128 out of the 227 who voted for the amendment opposed the bill. In the Senate, the vote in favor of the precursor to the present Section 204(j)(3) was 45 to 35 (*id.* at 2986). The final vote in favor of the bill was 78 to 11 (*id.*, at 3445). 34 of the 78 had approved the amendment, 33 had opposed it and 11 had not voted on it.

tained because Section 204(j) was in it. The fact that a certain number of members of Congress may have voted in favor of Section 204(j) when it was first proposed as an amendment to the bill does not prove, of course, that all of them would have voted against the bill as a whole if that section had been lacking.

We mention these factors only to indicate how unsatisfactory they are as guides to legislative intent on severability. The most that can be said in favor of respondent's position is that a number of members of Congress who voted to pass the bill might not have done so without Section 204(j), and that this group combined with those who had opposed Section 204(j) but favored the bill, were necessary to constitute a majority. But query as to whether the intention of Congress is expressed by a majority of those who approve enactment of a bill, or by a minority of those who vote for a bill combined with those who vote against it when the latter combination constitutes a majority. Certainly, in the absence of any express and authoritative statements showing an intention that the Act fall if Section 204(j) is held invalid, such a state of legislative opinion is not adequate basis for disregarding the explicit declaration of legislative intent in the separability clause.[11]

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[11] We do not mean to suggest that such a statement would overcome the separability clause, but only that it would be at least a minimum requirement.

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It is to be observed that the test is whether Congress would intend the statute to fall completely if a particular part is invalidated, not whether Congress would in the first instance have passed the statute without the allegedly unconstitutional provision. This is vividly demonstrated by *Kay* v. *United States,* 303 U. S. 1, 8, in which this Court held severable a provision of the Home Owners Loan Act of 1933 making it a criminal offense to solicit or accept fees from persons applying for loans. Obviously this provision would not have been enacted all by itself, for there would have been nothing to which it could have applied.[12] Equally clearly, Congress would have intended the provision to stand independently once the statute was enacted, as a means of preventing misapplication of the public funds and protecting applicants for loans, even if the substantive provisions of the statute were held invalid.[13] The *Electric Bond & Share* case, 303 U. S. 419, may well be subject to the same analysis. Congress might not have enacted the registration provisions of the Utility Holding Company Act by themselves, though it

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[12] This was conceded by the Government in its brief in the *Kay* case, pp. 52-53.

[13] The differentiation between the intention of Congress to pass valid portions of the statute independently in the first instance and its intention that the latter should stand separately if the remainder of the law were held void was not mentioned in the Court's opinion, which treated the petitioner's separability argument as of little substance, but was argued in the opposing briefs. See brief for the United States, pp. 52-54, petitioner's reply brief, pp. 8-10.

might have intended them to stand by themselves if the other provisions of the statute were held to go beyond constitutional bounds.

III

Other Constitutional Objections Raised by Appellees Are Lacking in Merit

Appellees have made other constitutional objections to the Act which merit only short consideration.

1. *The War Power.* The first is that when the Housing and Rent Act of 1949 was enacted, the "War Emergency" had terminated, and with it the war powers of Congress to legislate respecting rent control. If, by this contention, appellees mean to imply that the exercise of war powers is limited to a period when actual fighting is in progress, the contrary has been established by this Court. *Fleming* v. *Mohawk Wrecking & Lumber Co.,* 331 U. S. 111, 116; *Woods* v. *Miller Co., supra,* 333 U. S. at 141-142. If it is appellees' contention that the housing emergency created by the war no longer exists, the facts on the basis of which Congress acted demonstrated the contrary.

The legislative history of the Act of 1949, "makes abundantly clear that there has not yet been eliminated the deficit in housing which in considerable measure was caused by the heavy demobilization of veterans and by the cessation or reduction in residential construction during the period of hostilities due to the allocation of building materials

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to military projects" (cf. *Woods* v. *Miller Co., supra,* at p. 142). Extensive hearings by Congress disclosed a serious housing shortage arising out of the war and an alarming increase in unlawful evictions, overcharges and black market operations in the rental of housing accommodations.[14] In the Report of the Act of 1949 by the Senate Committee on Banking and Currency, it was pointed out that "the emergency with respect to the housing shortage growing out of the exigencies of World War II still exists, and that it is necessary for a further limited period to continue a program of Federal rent control" (Report of Senate Banking and Currency, No. 127, 81st Cong., 1st Sess., p. 1). The same conclusion was reached by the House Committee on Banking and Currency (Report of House Committee on Banking and Currency, No. 215, 81st Cong., 1st Sess., pp. 1-3). Reference was made in both Senate and House Committee Reports to the significant fact that approximately seven hundred local decontrol boards throughout the country "which are in a better position to determine the actual housing supply and demand situation than any other group, and whose business it is to decontrol defense rental areas if the supply of rental accommodations is adequate, have found relatively few occasions to do so" (Senate Report

[14] See, Testimony of Tighe E. Woods, Housing Expediter, Hearings before Subcommittees of the Senate Banking and Currency Committee on S. 434, S. 600 and S. 888, 81st Cong., 1st Sess., at pp. 31-38; Hearings before the House Banking and Currency Committee on H.R. 198, etc., 81st Cong., 1st Sess., pp. 36-48.

No. 127, *supra*, p. 3; House Report No. 215, *supra*, p. 2). Moreover, both reports observed that although the Expediter had made surveys in more than nine hundred counties throughout the United States, he had "been able to take only thirty-one decontrol actions" (Senate Report, p. 3; House Report, p. 2).

The Committee Reports and the history of the statute on a whole demonstrate clearly that Congress was fully conscious both of the continuation of the housing emergency in many parts of the country and of the need for relinquishing the wartime controls and turning the subject back to the states as promptly as possible. Section 204(j), which appellees are assailing because it does transfer rent control to the states in some measure, is the principal manifestation in the statute of this recognition by Congress that the war emergency was drawing to a close. It is anomalous for appellees both to challenge the statute as a proper exercise of the war powers and at the same time to base their principal attack on the ground that it was unlawful for Congress to relinquish its control to the states in Section 204(j).

2. *Delegation to the Housing Expediter.* Respondents also claim that Congress improperly delegated legislative power to the Housing Expediter. The powers conferred by the Act of 1949 upon the Expediter are not substantially different than those provided by the Act of 1947. Overrul-

ing the objection that delegation under the Act was unlawful, this Court, in *Woods* v. *Miller Co., supra,* declared that "the powers thus delegated are far less extensive than those sustained in *Bowles* v. *Willingham, supra* [321 U. S. 503], pp. 512-515" (333 U.S. at p. 144). The same answer is no less appropriate to the objection made here.

3. *Due Process.* Appellees argue that the Act constitutes a taking of property without due process of law and without just compensation. The contrary has been established in *Woods* v. *Miller Co.,* and *Bowles* v. *Willingham, supra.* Contrary to appellees' contention, owners of property are not obliged to rent their property against their will. Like Section 4(d) of the Act of 1942, the Act of 1949 expressly declares that "Nothing in this Act * * * shall be construed to require any person to offer any housing accommodations for rent" (Sec. 302). Construing Section 4(d) of the 1942 Act in the face of a similar contention, this Court said in *Bowles* v. *Willingham, supra,* 321 U.S. at p. 517:

> We are not dealing here with a situation which involves a "taking" of property. *Wilson* v. *Brown, supra.* By Section 4(d) of the Act it is provided that "nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent." There is no requirement that the apartments in question be used for purposes which bring them under the Act.

See, too, *Woods* v. *Durr*, 176 F. 2d 273 (C.A. 3).

4. *Reasonable rate of compensation.* Appellees also complain that the 1949 Act deprives them of property without due process because it fails to provide a means whereby an owner may "receive a reasonable rate of compensation for the use of his property." A similar contention was disposed of as untenable in *Bowles* v. *Willingham, supra*, 321 U.S. at pp. 517-518; see, too, *Woods* v. *Miller Co., supra*, 333 U.S. at p. 146.

The fact is, moreover, that the Act, as amended in 1949, unlike prior Acts, expressly provides that in making adjustments, the Housing Expediter and local boards "shall observe the principle of maintaining maximum rents for controlled housing accommodations, so far as is practicable, at levels which will yield to landlords a fair net operating income from such housing accommodations" (Sec. 204(b)). The Act likewise requires due consideration to be given to relevant factors which are expressly set forth in determining whether the maximum rent for the housing accommodations yields a fair net operating income.[15] Thus, this Act goes

[15] Section 204(b) of the 1949 Act provides in part: "In determining whether the maximum rent for controlled housing accommodations yields a fair net operating income from such housing accommodations, due consideration shall be given to the following, among other relevant factors: (A) Increases in property taxes; (B) unavoidable increases in operating and maintenance expenses; (C) major capital improvement of the housing accommodations as distinguished from ordinary repair, replacement, and maintenance; (D) increases or decreases in living space, services, furniture, furnishings, or equipment; and (E) substantial deterioration

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much further in protecting landlords than either the Acts of 1942 or 1947, which were sustained as valid in the *Willingham* and *Miller* cases.

5. *Alleged absence of judicial review.* There is likewise no merit to appellee's contention that the Act violates the Fifth Amendment in failing to provide a person aggrieved by action of the Expediter the right of judicial review. There is no restriction in the Act against judicial review,[16] and there is nothing in the legislative history suggesting that Congress intended to bar persons aggrieved by the impact of the Act or regulations from resort to the courts for relief (cf. *Stark* v. *Wickard,* 321 U. S. 288, 307-308; *Switchmen's Union* v. *Mediation Board,* 320 U. S. 297, 301; *Estep* v. *United States,* 327 U. S. 114, 120). That being so, the existence of general federal jurisdiction would appear to be present here for protecting individual rights from administrative rulings beyond the limit of statutory authority, *Stark* v. *Wickard, supra,* pp. 309-310; Administrative Procedure Act, Section 10, 5 U. S. C. § 1009. In accord with these principles, the Expediter has con-

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of the housing accommodations, other than ordinary wear and tear, or failure to perform ordinary repair, replacement, or maintenance." Pursuant to these provisions, the Expediter has issued the Rent Regulation for Housing, 14 F. R. 5711, which includes these factors in determining fair net operating income for purposes of upward adjustments in rents.

[16] Section 204(e) of the Act provides only for review by the Emergency Court of Appeals of dispositions by local boards respecting removal of maximum rents and general adjustments.

sistently taken the view that landlords complaining of the effect of the Act have the right to judicial review. In no instance has any court refused to accept jurisdiction in such cases on the ground that the Act did not confer it.

6. *Use of Confidential Information.* Nor is due process violated to the extent that the Expediter is authorized by Section 206(g) of the Act to refuse to publish or disclose information which he "deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information unless he determines that the withholding thereof is contrary to the public interest." A similar provision was contained in the 1942 Act (Sec. 202(h), 50 U. S. C. App. 922(h)). Obviously, this is a reasonable means of protecting tenants from reprisal on the part of landlords, where information has been provided with respect to overcharges or other violation. The landlord suffers no legal harm where this information is withheld from him, since he was not entitled under law to it in the first instance. In no event does the landlord sustain any liability because of this information until after trial at which, of course, he will have opportunity to hear and meet the evidence against him. If the point of this objection is that the Expediter may thereby enter an order or regulations fixing rents without consulting landlords or providing them with a hearing, it is also wanting in merit since no such requirement

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is imposed by law (see, *Bowles* v. *Willingham, supra,* 321 U. S. at pp. 519-520).

7. *Alleged arbitrary classification.* This Court's ruling in *Woods* v. *Miller, Co., supra,* is likewise dispositive of respondents' argument that the Act creates arbitrary classifications contrary to the Fifth Amendment. As this Court said (333 U. S. at p. 145):

> Objection is made that the Act by its exemption of certain classes of housing accommodations violates the Fifth Amendment. * * * It [Congress] need not control all rents or none. It can select those areas or those classes of property where the need seems the greatest. See *Barclay & Co.* v. *Edwards,* 267 U. S. 442, 450. This alone is adequate answer to the objection, equally applicable to the original Act sustained in *Bowles* v. *Willingham, supra,* that the present Act lacks uniformity in application.

See, too, *Bowles* v. *Willingham, supra,* 321 U. S. at p. 518.

IV

The Case Is Not Moot

Although we do not believe the case to be moot, we think the following facts bearing on mootness should be brought to the attention of the Court.

Since this case was docketed, appellees have filed with the Area Rent Office in Chicago petitions for eviction of tenants in the building here involved,

alleging that they presently have the 65% tenant participation required by the Rent Regulation. Eviction certificates have not been issued because the tenants have stated that by November 27, 1949 they will file objections to the petitions, in which they will assert that the landlord has not met the requirements of the Regulation. In due course it may be necessary to hold hearings to determine whether "removals or evictions of the character proposed are not inconsistent with the purposes of the act or this regulation and would not be likely to result in the circumvention or evasion thereof." (Regulation, § 825.6(c), 14 Fed. Reg. 5719.)

The backlog of cases in the Chicago Office is such that no decision is likely to be reached on the appellees' petitions until near the end of December. Whether eviction certificates will be granted by the Chicago Office cannot, of course, be foretold. Whichever way that Office decides the case, an appeal may be taken to the Housing Expediter in Washington. Rent Procedural Regulation No. 2, § 840.113, 14 Fed. Reg. 5273. Counsel for the tenants have advised the Office in Chicago that they intend to appeal if the decision in Chicago is adverse. The Regulation provides for a stay of eviction pending appeal. *Id.* Sec. 840.121, 14 Fed. Reg. 5275. Under the Regulation, the appellant has 20 days after issuance of the order to be reviewed in which to file an appeal (§ 840.115, 14 Fed. Reg. 5273) and the appellee 15 days to file his re-

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sponse (§ 840.122, 14 Fed. Reg. 5275). The backlog of cases in Washington is such that no decision could be rendered by the Expediter until approximately two months after the appeal papers reach Washington.

In view of the above facts, we think it clear that the case has not become moot by reason of appellees' present claim that 65% of the tenants in occupancy have now joined the cooperative. If the statute is constitutional, appellees will be unable to evict tenants for a number of months at the earliest, assuming that they establish their claim. If the statute is unconstitutional, they are entitled to evict the tenants immediately.

Furthermore, apart from the above, an injunction would be effective as against the individual appellees who organized the cooperative to prevent them from violating the statute on other properties. The cessation of violations on the particular property would not bar injunctive relief generally. Cf. *Hecht Co.* v. *Bowles,* 321 U. S. 321, 327; *Porter* v. *Lee,* 328 U. S. 246, 251-252; *Consolidated Edison Co.* v. *Labor Board,* 305 U. S. 197, 230; *Federal Trade Commission* v. *Goodyear Tire Co.,* 304 U. S. 257, 260.

There is also a public interest in not having the case held moot. Although some judges have rejected the reasoning of the court below in this case, no enforcement can be obtained in 29 cases pending before Judge Shaw as of October 28, 1949,

unless and until this Court holds the Act constitutional.[17] In addition, in a large number of other cases, other judges throughout the country are awaiting this Court's decision before they enforce the Act.

CONCLUSION

The judgment below should be reversed and the cause remanded to the District Court for further proceedings.

Respectfully submitted,

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Office of the Housing Expediter.

NOVEMBER 1949

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[17] One other Chicago district judge is refusing to hold final hearings in any of the 30 Rent Act cases pending before him, although he has granted temporary injunctions in some cases. Numerous additional cases, of course, are being filed each month, and these are assigned by lot to the various district judges in Chicago.

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 334

THE UNITED STATES OF AMERICA, APPELLANT

v.

SHORELINE COOPERATIVE APARTMENTS, INC., A CORPORATION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

REPLY BRIEF FOR THE UNITED STATES

The briefs for the appellees make a contention, not passed upon by the court below or treated in the main brief for the Government, that Section 209 of the 1949 Rent Act constitutes an unlawful delegation of power to the Expediter. Although we think it plain that the argument is without merit, a brief discussion of the point may be helpful.

Section 209 substantially incorporates the language of the Emergency Price Control Act of 1942, as amended, and revests eviction control in the hands of the Housing Expediter in substantially the same way in which it was vested in the Price Administrator under the Act of 1942. The language

of the 1942 and the 1949 Acts is almost identical.

Section 209 of the 1949 Act:

"Whenever in the judgment of the Housing Expediter such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result in rent increases inconsistent with the purposes of this Act."

Section 2(d) of the 1942 Act:

"Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act."

The sole difference between Section 2(d) of the 1942 Act and Section 209 of the 1949 Act is the inclusion in the former of authority to deal with price practices which, of course, Congress had no occasion to confer upon the Expediter under the 1949 Act, dealing as it did solely with rent control. Section 2(d) of the 1942 Act was sustained as valid against the objection that it constituted an unlawful delegation of authority in *Taylor* v. *Brown,* 137 F. 2d 654, 662, 663 (E.C.A.), on the ground that it was appropriate to effective rent regulation. See, also, *Wilson* v. *Brown,* 137 F. 2d 348 (E.C.A.), and *Taylor* v. *Bowles,* 145 F. 2d 833 (E.C.A.).

The delegation in Section 209 of the 1949 Act has

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recently been sustained by the Court of Appeals for the Third Circuit in *Woods* v. *Durr,* 176 F. 2d 273. The opinion of Judge Maris stated on the constitutional point (p. 275):

> Amended section 209, the statutory provision under attack, so far as we are here concerned merely authorizes the Housing Expediter by regulation or order to regulate or prohibit those speculative or manipulative practices relating to recovery of the possession of controlled housing accommodations which in his judgment are equivalent to or likely to result in rent increases inconsistent with the purposes of the Housing and Rent Act. It thus appears that the eviction practices which the act authorizes the Housing Expediter to regulate or prohibit are limited to those which he finds to be speculative or manipulative and which are equivalent to or are likely to result in undue rent increases, in other words, those practices which are likely to result in the circumvention or evasion of the act. Moreover his power in this connection is limited by the provision of Section 301 that nothing in the act shall be construed to require any person to offer any housing accommodations for rent. These statutory provisions, as we have seen, are substantially equivalent to those which were contained in the Emergency Price Control Act of 1942. The latter provisions have been sustained as constitutional [5] and since the Housing and Rent Act of 1947 has itself also

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[5] *Bowles* v. *Willingham,* 1944, 321 U.S. 503, 64 S. Ct. 641, 88 L. Ed. 892; *Wilson* v. *Brown,* Em. App. 1943, 137 F. 2d 348; *Taylor* v. *Bowles,* Em. App., 1944, 145 F. 2d 833.

been sustained [6] we see no basis for holding that the provisions of amended Section 209 of the 1947 Act as modified by Section 301 of the 1949 Act are not likewise valid.

On three occasions this Court gave effect to the provisions in Section 2(d) of the 1942 Act allowing the Price Administrator to regulate evictions. In *Parker* v. *Fleming*, 329 U.S. 531, this Court, speaking of the 1942 Act, and specifically of Section 2(d), said the following (at pp. 536-537):

> The Emergency Price Control Act was intended in part to prevent excessive rents in the public interest, and the very anti-eviction regulations under which the Administrator granted the eviction certificate here were specifically designed to prevent manipulative renting practices which would result in excessive rents. Those regulations have been held valid by the Emergency Court of Appeals, *Taylor* v. *Brown*, 137 F. 2d 654, 662-663, and their validity is not here challenged.

See, too, *Porter* v. *Dicken*, 328 U.S. 252, where this Court enjoined a state court eviction on the ground that it violated the Act of 1942 and the eviction regulations issued by the Price Administrator pursuant to it. In *Fleming* v. *Rhodes*, 331 U.S. 100, the Act of 1942 and the eviction provisions of the Rent Regulation issued thereunder were invoked by this Court to prevent execution of judgments of eviction rendered by state courts. In that case, the

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[6] *Woods* v. *Cloyd W. Miller Co.*, 1948, 333 U.S. 138, 68 S. Ct. 421, 92 L. Ed. 596.

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landlords claimed that the Act of 1942, as amended in 1946, was unconstitutional in depriving landlords of vested rights obtained by judgment during the interim period (July 1 to July 25, 1946), when there was no rent control in effect. In none of the above three cases was any contention made that Section 2(d) contained an unlawful delegation of power.

In *Bowles* v. *Willingham*, 321 U.S. 503, this Court sustained the delegation of authority in the Price Control Act generally, without specific reference to Section 2(d). Emphasis instead was placed upon the provisions of Section 2(b) and (c), which conferred authority upon the Price Administrator to make adjustments of general applicability, and other adjustments as were "necessary or proper in order to effectuate the purposes of this Act." In sustaining the broader delegation of power contained in Section 2(b) and (c), this Court said the following (at p. 515):

> We recently stated in connection with this problem of delegation, "The Constitution, viewed as a continuously operative charter of government, is not to be interpreted as demanding the impossible or the impracticable." *Opp Cotton Mills* v. *Administrator, supra*, p. 145. In terms of hard-headed practicalities Congress frequently could not perform its functions if it were required to make an appraisal of the myriad of facts applicable to varying situations, area by area throughout the land, and then to determine in each case what should be done. Congress does not abdicate its func-

tions when it describes what job must be done, who must do it, and what is the scope of his authority. In our complex economy that indeed is frequently the only way in which the legislative process can go forward.

In the 1947 and 1948 Acts, Congress placed the question of eviction in the hands of the local courts, but this method of effectuating rent control proved to be unsatisfactory. Tighe E. Woods, the Housing Expediter, testified that black markets in overceiling rentals had been developed because the agency had been deprived of authority to bring statutory damage actions, apply criminal sanctions, *and regulate evictions* (Hearings before Committee on Banking and Currency on H.R. 198, etc., Feb. 7, 1949, pp. 41-42). As Mr. Woods pointed out, many tenants had acceded to landlords' demands for overcharges because of eviction fears, and while tenants could in some instances have successfully defended themselves against illegal evictions in the local courts, they were unwilling to run this risk. The result was that "the present system has not worked. The result is a gradual break of the legal ceiling" (*ibid.* p. 41). It was also testified by Mr. Woods that greater uniformity would be achieved, and a better opportunity to check upon the good faith of landlords seeking eviction for their own occupancy, if eviction control were placed back in the hands of the agency which was entrusted by Congress to police rent violations (*ibid.* p. 42). In the Report of the Senate Committee on Banking and Currency, the following was

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said respecting the proposed Section 209 (81st Cong., 1st Sess., Rep. No. 127, p. 10):

> The bill would also give the Housing Expediter authority to issue regulations governing the eviction of tenants from controlled housing accommodations. This will permit uniformity in the operation of eviction provisions, which under existing law are the subject of variation between local courts which results in actions that are discriminatory as between tenants in different local court jurisdictions. The committee believes that restrictions on evictions should be same in every locality.

For the above reasons we submit that there can be no question as to the validity of the delegation of authority contained in Section 209 of the 1949 Act.

Respectfully submitted,

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DECEMBER, 1949.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 334

UNITED STATES OF AMERICA,
Appellant,

vs.

SHORELINE COOPERATIVE APARTMENTS, INC., A Corporation; et al.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLEES, SHORELINE COOPERATIVE APARTMENTS, INC., A Corporation; J. M. NICHOLSON; NATHAN SUCHERMAN; MILTON TINSLEY; FRANK FERRARO; HELEN FERRARO; JOHN J. CHALMERS; SAMUEL SILVERMAN; MAURICE LIPKIN; CHARLES E. KOCH; CHARLES H. BRANDT; JEROME A. CUTLER; HARRY TARLER; EUGENE B. FEINGOLD and HERBERT S. KOHN.

SUMMARY OF ARGUMENT.

I.

Section 204 (j) of the Housing and Rent Act of 1949 is invalid and unconstitutional because:

A. It contains a illegal delegation of legislative powers by Congress:

1. To the Housing Expediter.
2. To various local boards.
3. To the governors of all states, territories and possessions of the United States.
4. To the legislatures of the various states, territories and possessions of the United States.
5. To the governing bodies of each and every incorporated city, town and village in the United States.

B. It contains a illegal delegation of legislative powers by Congress because the standards set out for exercise of legislative power by the above mentioned persons and governmental units are vague and general and depend upon the meanings ascribed by said persons and governmental units to the following phrases:

1. Sufficient construction (Section 204 (e)).
2. Otherwise reasonably met (Section 204 (e)).
3. Creation of additional rental units by conversion (Section 204 (c)).
4. Adequately provided (Section 204 (j) (i)).
5. Specifically expressed its intent (Section 204 (j) (1)).
6. No longer necessary (Section 204 (j) (2)).
7. Such a shortage of accommodations as to require rent control no longer exists (Section 204 (j) (3)).

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II.

Section 209 of the Housing and Rent Act of 1949 is unconstitutional and invalid because it contains too broad a delegation of legislative power from Congress to the Housing Expediter without sufficient delineation of the limits of said power.

III.

The unconstitutionality of either or both of Sections 204 (j) and 209 affects the entire Housing and Rent Act of 1949 and makes the entire statute invalid. The statute cannot exist without Section 209 and the intent of Congress to adopt the provisions of the Act only on condition that Section 204 (j) be included therein is manifest and unescapable. The clear intention of Congress overcomes any presumption of severability based upon Section 303.

ARGUMENT.

I.

SECTION 204 (j) OF THE HOUSING AND RENT ACT OF 1949 IS UNCONSTITUTIONAL.

A. The Standards Contained in Section 204 (j) are Inadequate. The Delegation of Legislative Authority is Complete.

Appellant first contends that the language of Section 204 (j) sets up a standard which is sufficiently definite. This argument is based upon comparison of several words contained in Section 204 (j) with several of the words selected from other statutes heretofore passed upon by this Court (Petitioner's Brief, pages 15 to 17). It is submitted that a more complete comparison is required to constitute a valid basis for argument. In each of the cases thus cited by appellant, there is delegation of authority to an official or to an administrative body couched in language which this Court held to constitute a sufficiently definite delineation of the granted power. Conceding, of course, the soundness of these decisions, are they applicable to this portion of the argument?

By Section 204 (j) Congress has delegated legislative authority to decontrol to the following classes or types of persons; said authority to be exercised upon conditions hereinafter noted:

1. To the respective governors of every state, territory, and possession of the United States; such authority to be exercised:

A. When the state has "adequately provided for the establishment and maintenance of maximum rents"; or

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B. When the state "has specifically expressed its intent that state rent control shall be in lieu of federal rent control".

2. To the legislature of every state, territory or possession of the United States which shall by law declare that Federal rent control "is no longer necessary" in its area or any part thereof.

3. To the "governing body" of each and every incorporated city, town or village in the United States which shall make a "finding" as a result of "a public hearing" conducted by it "that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village".

These delegations of power to decontrol are in addition to the authority granted by the Act to the Housing Expediter to decontrol any area or portion thereof if in his judgment the need for control no longer exists and in addition to the duty vested in the Expediter to decontrol luxury housing accommodations if in his judgment such action would result in creation of additional housing units by conversion (Section 204 (c); Petitioner's Brief, page 30).

Still a further delegation appears in those provisions of the Act which vest in Local Advisory Boards power to decontrol the area of their jurisdiction or any part thereof if in the judgment of the Board the need for control no longer exists due to sufficient construction of new housing or if the demand for rental housing accommodations has been otherwise reasonable met (Section 204 (e); Petitioner's Brief, page 30).

As the District Court pointed out in its opinion, each of these delegations of power is broad, loose, lax and indefinite (R. 12, 13). This type of massive and complete delegation of legislative power to so many different per-

sons to be exercised under so many varying circumstances is far different from the type of delegation approved by this Court in any of the cases cited by plaintiff.

In each and every one of the cases cited in Petitioner's Brief, the authority is delegated either to a single administrative official (*Lichter* v. *United States*, 334 U. S. 742; *Woods* v. *Miller Co.*, 333 U. S. 138; *Tagg Bros.* v. *United States*, 280 U. S. 420 and *United States* v. *Chemical Foundation*, 272 U. S. 1) or to a duly constituted administrative body (*American Power & Light Co.* v. *S. E. C.*, 329 U. S. 90; *National Broadcasting Co.* v. *United States*, 319 U. S. 190; *Federal Power Commission* v. *Hope Gas Co.*, 302 U. S. 591; *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381; *Radio Commission* v. *Nelson Bros.*, 289 U. S. 266; *New York Securities Corp.* v. *United States*, 287 U. S. 12 and *Chesapeake & Ohio Ry.* v. *United States*, 283 U. S. 35).

In each of these cases, there is a singly carefully drafted grant of power to the official or commission. Usually the words employed in delineating the power have a well defined meaning (*Lichter* v. *United States*, 334 U. S. 742, 786). The delegation of power under such circumstances is not a proper subject of comparison to the statute here involved.

Furthermore, in every case thus cited by appellant, there is provision for judicial review of the decision or order of the official or administrative body to which power has been delegated. In the statute at bar, there is no right of review from the determinations of fact to be made by governors, legislatures or governing bodies of cities, towns or villages. The Housing Expediter must approve in ministerial fashion the desire for decontrol expressed by these governmental agencies.

Situations where power is delegated to a single responsible office holder appointed under Congressional super-

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vision or to a Commission subject to judicial review are vastly different from a delegation of complete power to governors, legislatures and governing bodies of cities and villages. Admittedly, complex modern problems require delegation by Congress. Admittedly, this Court has sanctioned delegation to duly constituted Commissions or Administrators. But, appellant has cited no case in any manner comparable to the case at bar in which there is complete delegation of legislative power to so many different types of nominees to be exercised under such varying circumstances.

The exercise of the delegations of power made by this statute depend upon the meaning of the following words or phrases:

1. Sufficient construction (Section 204 (e)).
2. Otherwise reasonably met (Section 204 (e)).
3. Creation of additional rental units by conversion (Section 204 (c)).
4. Adequately provided (Section 204 (j) (1)).
5. Specifically expressed its intent (Section 204 (j) (1)).
6 No. longer necessary (Section 204 (j) (2)).
7. Such a shortage of accommodations as to require rent control no longer exists (Section 204 (j) (3)).

And, to make the vice of this statute more apparent, the meanings of these seven phrases are to be determined not by one single Commission or authority but by:

a. The Housing Expediter.
b. The various local boards.
c. The governor of any state, (territory or possession of the United States).
d. The legislature of any state.
e. The governing body of any incorporated city, town or village.

It is therefore submitted that cases involving one delegation of power to a single board or official do not apply here. Delegation of power under this Act is absolute and complete and subject to no rule or reason.

The decisions of this Court most applicable to this situation are *Schechter Poultry Corp.* v. *United States,* 295 U. S. 495 and *Panama Refining Co.* v. *Ryan,* 293 U. S. 388. The last named case is of special significance. This Court held unconstitutional Section 9 c of the National Industrial Recovery Act. The statute authorized the President of the United States to prohibit transportation in interstate and foreign commerce of petroleum in execss of the amount permitted to be produced or withdrawn from storage by any state law or by any valid regulation promulgated by a duly authorized state agency (293 U. S. 414, 415). The statute in the case at bar goes much beyond that in the case of *Panama Refining Co.* v. *Ryan.* There, the statute directed the President to act in accordance with State laws or regulations. Here, the discretion and power to decontrol is vested in governors, in legislatures and even in governing bodies of cities and villages. If such delegation is upheld as proper, the constitutional doctrine of separation of governmental powers is a nullity.

(B) There is a Complete Delegation of Legislative Power in this Statute which Invalidates it.

In this portion of the argument, appellant takes the position that the statute in question is a simple delegation of power concerning details by Congress to the states and that as such the statute is constitutional. Appellant seeks to analyze this statute into a simple use of state officials for federal purposes. An examination of the cited authorities is required.

To begin with, appellant cites cases in which federal courts are required by Act of Congress to proceed in accordance with state or local law. Such instances are *Wayman* v. *Southard*, 10 Wheat. 1 and *Amy* v. *Watertown*, 130 U. S. 301. The lack of analogy between these cases and the situation at bar is readily apparent. If Congress were to provide that the governor of any state could by proclamation vest in the courts of that state all of the jurisdiction presently reserved to the United States District Courts, then the situation might be comparable to the case at bar. Or, if the legislature of any state was authorized by Congress to divest the federal courts within its boundaries of all power and to deliver complete jurisdiction in federal matters to the state courts, then also the situation would be similar to the case at bar.

In the case of *Wayman* v. *Southard*, 10 Wheat. 1 Chief Justice Marshall was careful to point out that the statute there under consideration merely required federal courts to give effect to varying methods of legal procedure in the several states. The Chief Justice pointed out, however, (p. 46):

> "The state assemblies do not constitute a legislative body for the union. They possess no portion of that legislative power which the Constitution vests in Congress, and cannot receive it by delegation."

The next type of situation cited by appellant is concerned with provisions of the bankruptcy law which recognized state law in various details, such as exemptions granted to the bankrupt (Petitioner's Brief 19, 20, citing *Hanover National Bank* v. *Moyses*, 186 U. S. 181). Again, there is utter lack of analogy to the situation at bar. The case might be comparable if Congress had provided that any state might by proclamation of its governor or action by its legislature remove itself from the provisions of the

federal bankruptcy law if it had established a sound and adequate bankruptcy system of its own. Or, the comparison to the case at bar might be justified if Congress had provided that the governing body of any incorporated city, town or village might similarly exempt its inhabitants from federal bankruptcy law upon adoption of its own adequate bankruptcy system. In the cited case of *Hanover National Bank* v. *Moyses*, 186 U. S. 181, at page 190 of the Opinion, this Court pointed out that the system of bankruptcy law was general and uniform throughout the United States in accordance with the Constitution, "Although it may result in certain particulars differently in different States."

The next type of case cited by appellant is that in which fact finding or other administrative functions of a state agency are depended upon by Congress or by the federal government in exercise of a federal power. Such cases are *Butte City Water Co.* v. *Baker*, 196 U. S. 119, *United States* v. *Jones*, 109 U. S. 513 and *Parker* v. *Richard*, 250 U. S. 235. We readily accept this type of decision and state that it does not affect the case at bar. In the type of case cited, the legislative function is completely discharged by Congress. The details of the exercise of that function are supplied by a designated agency in accordance with the principle delineated by Congress. It can readily be seen that the delegation of such details is not unconstitutional merely because Congress has used a state court or a state administrative body for supplying details in a legislative framework erected solely by Congress. The situation in this type of case might be comparable to the case at bar if Congress had, for example, delegated complete power with respect to mining claims on public lands to the state in which said lands were located; or if Congress had provided that upon procla-

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mation of a governor of any state to the effect that the legislature of said state has adequately provided for administration of mining claims on public lands that such function would become entirely vested in the state. Similar situations of mere dependence of the federal government upon state officials in connection with filling in of details are found in the cases cited on pages 23 and 24 of Petitioner's Brief.

The next type of case cited by appellant if that of a federal regulation effective upon a condition. These are cases such as *Currin* v. *Wallace*, 306 U. S. 1; *United States* v. *Rock Royal*, 307 U. S. 533 and *Wickard* v. *Filburn*, 317 U. S. 111. In this type of case, the statute provides that orders of an administrative official (not the statute itself) shall become effective only after approval of such orders in a referendum of those persons who would be affected thereby. Again, the complete lack of an analogy is apparent. In the cited type of case, the order of the administrative official is conditioned upon approval of a majority of the persons affected thereby. In the case of *Currin* v. *Wallace*, 306 U. S. 1, this Court pointed out at page 15 of its Opinion that the referendum did not involve a delegation of legislative authority but only involved the proposition that the regulation would not operate on a given market unless favored by two-thirds of those affected by it. At page 16 of the Opinion this Court pointed out that in such cases Congress exercises the legislative authority and that the result of the referendum is merely one of the conditions upon which the exercise of such authority depends. The referendum decides only the time when the exercise of legislative power by Congress shall become effective.

In the referendum cases, those affected by the Administrative Order are given the right to express their desire,

either to be subject to the order or to be exempt therefrom. No element of fact finding or of the legislative process is involved. This situation is completely different from the case at bar. The statute first makes rent control effective by Congress over the entire country without provision for any condition or referendum. Then, the statute proceeds to vest in governors, state legislatures and governing bodies of cities, towns or villages the right to exercise their discretion in a legislative or fact finding manner, with the applicability of the federal Act to be dependent upon the result of the exercise of this legislative function. In Section 204 (j) of this Act, it should be noted that all of the fact finding and legislative discretion and power is vested in the governor, the legislature or the governing body of the city, town or village. In this section, the Housing Expediter has no discretion of any kind and he must act in accordance with the finding and determination presented to him. The law is clearly worded to the effect that the Housing Expediter "shall" decontrol the area in question. In this regard, the Expediter would be obliged to approve decontrol action taken by other persons in spite of his own conclusion that the need for rent control still existed. Presumably, if the Expediter was of the opinion that need for such control no longer existed, he would decontrol the area in question in accordance with the power vested in him by Section 204 (c). In effect, therefore, Section 204 (j) vests in the governors, legislatures and governing bodies of every city, town or village in the United States the right to override the judgment of the Housing Expediter and to remove their own locality from the operation of a Federal law.

We do not believe that any of the cases cited by appellant in this portion of the argument are in point. We

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have been unable to find any decision of this Court which we regard as being applicable here. We believe that the sweeping provisions of this statute are a new departure in legislative history and that Congress has never before attempted such broad and massive delegation of its legislative power.

Commencing at page 26 of Petitioner's Brief, the point is made that the provisions of Section 204 (j) amount merely to "cooperative adjustments between state and federal governments." It is undoubtedly true that federal and state governments must make cooperative adjustments and that such arrangements and cooperation between the co-existing governments are eminently to be favored. There should be a high degree of cooperation between the federal government and all of its instrumentalities on the one hand and the governing agencies of the several states on the other hand (*Prudential Insurance Co.* v. *Benjamin*, 328 U. S. at page 439). But, we do not think it possible or permissible to argue from so general a premise that the federal government can relinquish to governors, legislatures and governing bodies of cities, towns and villages the right to declare that the area over which they have sovereignty shall be exempt from operation of federal law. In this type of situation, where Congress has admittedly acted under its war power, the only possible method of cooperation between federal and state sovereignties is complete removal of federal regulation from the field and relinquishment of the subject matter to state control. Exercise of sovereign war power by Congress is not a proper field for "cooperation" by state or city governments as provided by this statute.

The arguments set forth in Petitioner's Brief are a very astute attempt to uphold impossible contentions. The

whole argument is based upon complete disregard of two fundamental principles:

1. The war power of Congress is not a proper subject of delegation to the states, to governors or to governing bodies of cities or villages (Constitution Section 8, Article I).

2. The legislative powers reserved to Congress by the Constitution cannot be delegated to the several states (*Wayman* v. *Southard*, 10 Wheat. at page 46).

At page 27 of Petitioner's Brief, another vague and general point is raised to the effect that federal, state and local authorities should act together in order to bring about a gradual and orderly change from emergency controls to peacetime needs. Appellant admits that this vague generality is absolutely without precedent in any of the decisions of this Court. If the need for exercise of the war power by Congress upon a national scale still exists, then Congress should exercise that power in a uniform manner. In such instance, Congress could properly delegate to a federal administrative official the fact finding duty of ascertaining if the need for exercise of the war powers had passed in any particular portion of the country. (*Woods* v. *Miller Co.*, 333 U. S. 138, 144). But, if the need for exercise of war power in uniform fashion by the Congress no longer exists in the judgment of Congress, then Congress should leave the field of regulation entirely to the states. Each state will then act in accordance with its own need for a "gradual and orderly change" as appellant describes on page 27 of its Brief. If the need for federal regulation exists, then Congress should act accordingly and the right of self-elimination from the needed regulation should not be vested in governors, legislatures, or the governing bodies of incorporated cities, town and villages. Such

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complete and wholesale delegation of power is the key to irregularities and disorganization and not to a gradual and orderly change.

At page 27 of Petitioner's Brief, the contention is made that this statute is merely a method chosen by Congress of terminating control under the war powers, therefore it should be held constitutional unless there is no reasonable basis for its exercise. On the contrary, use of power by Congress on the basis of existence of war or war emergency should be scrutinized with care by this Court (Concurring opinion of Mr. Justice Jackson in *Woods* v. *Miller Co.*, 333 U. S. at page 147). If emergency controls are necessary and cannot be terminated without undue injury to the citizens, then by all means such controls should be maintained by Congress. But, if the emergency is of such nature that the controls can be lifted by so many different persons in such diverse situations then indeed there is no emergency and the entire field of control is best left to the several states.

II.

SECTION 209 OF THE HOUSING AND RENT ACT OF 1949 IS AN UNCONSTITUTIONAL DELEGATION OF POWER.

As originally adopted, the Emergency Price Control Act of 1942 (Section 2 (d)) granted the Housing Expediter power to promulgate regulations regarding eviction of tenants under local law. *Bowles* v. *Willingham*, 321 U. S. 503, did not pass upon the validity of this delegation of power and is concerned only with Section 2 (b) of the Emergency Price Control Act of 1942. But by the Housing and Rent Act of 1947, Congress reentered the field of

providing for evictions. This Act prescribed a detailed series of rules governing evictions and set out various situations in which these appellees and other owners of real estate might have sought possession of their property pursuant to Illinois law (Section 209).

Section 209 of the Housing and Rent Act of 1949 provides as follows:

> "Section 209. Whenever in the judgment of the Housing Expediter such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result in rent increases inconsistent with the purposes of this Act."

The cases which we consider most pertinent in this portion of the argument have already been referred to (*Panama Refining Co.* v. *Ryan*, 293 U. S. 388 and *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495).

Reference to Section 209 of the Act in question shows that it gives the Expediter no standard whatsoever. To begin with, he may act whenever in his judgment action may be necessary or proper to effectuate the purposes of the Act as he interprets them. Or, if he so desires, he may remain passive. The Expediter is left to exercise his own judgment and interpretation as to the purpose of the Act as intended by Congress. The Expediter is expressly given power to "*regulate or prohibit*" as he sees fit. This power attaches to "speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result

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in rent increases inconsistent with the purposes of this Act". The Expediter may exercise his judgment as to which rent increases are inconsistent with the purposes of the Act and further as to which practices are equivalent to or even likely to result in such inconsistent rent increases. This broad language means that the Expediter is absolute czar over evictions. He has power to curtail all evictions of any kind throughout the effective date of the legislation. He has unlimited power to impose any conditions which he sees fit upon evictions and upon the rights of the parties to this suit to resort to their remedies under the law of the State of Illinois.

It is no answer to say that the factual background of previous legislation or the language of prior statutory enactments gives a sufficiently definite standard for administrative action. Such standard does not exist within the terms of the grant of power and exercise of the delegated power is left entirely to the unrestricted discretion of the Housing Expediter. There are no procedural safeguards of any kind in this section of the Act to furnish protection against exercise of arbitrary power (*United States* v. *Rock Royal*, 307 U. S. at page 576). It is no answer to say that the regulations governing evictions as actually adopted under Section 209 are in fact reasonable, proper and effective. The present Expediter may possibly be succeeded in office by another official whose exercise of discretion may not be held within such reasonable limits. The vice in the statute is the delegation of unlimited power and the possibility of absolute exercise thereof. It is submitted that Section 209 of the Housing and Rent Act of 1949 violates the rights of these appellees as granted by Section 1 of Article I and Paragraph 18 of Section 8 of Article I of the Constitution of the United States.

III.

SECTIONS 204 (j) AND 209 ARE INSEPARABLE FROM THE REMAINDER OF THE ACT AND INVALIDATION OF THE ENTIRE ACT MUST FOLLOW FROM INVALIDATION OF EITHER SECTION 204 (j) OR SECTION 209.

We will open this portion of the argument by making certain concessions as to the effect upon this question of the invalidity of Section 204 (j):

1. We agree that the Housing and Rent Act can operate effectively if Section 204 (j) is stricken as invalid.

2. We agree that this statute contains the usual separability section cited at page 5 of Petitioner's Brief.

3. We agree that this statute, as all others with the separability clause, is to be aided by a presumption of divisibility (*Electric Bond Co.* v. *S. E. C.*, 303 U. S. at page 434).

We clash definitely with appellant in the statement that Congress intended that this statute should be separable and that the statute should remain in effect even without Section 204 (j). Appellant is correct in the statement that the matter is one of ascertaining the intent of Congress (*Electric Bond Co.* v. *S. E. C.*, 303 U. S. 419). The attempted analysis by appellant of the intent of Congress in this instance converts a simple matter into a maze of complications. A mere reference to the statute is sufficient to clarify the entire situation and to prove our point.

The Housing and Rent Act of 1947 authorizes the Housing Expediter to remove controls under certain circumstances (Petitioner's Brief, page 3, Housing and Rent Act of 1947 Section 204 (c), (e)). The opinion of this court

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in the case of *Woods* v. *Miller Co.*, 333 U. S. 138 was handed down on February 16, 1948. Therefore, in discussing the provisions of the Housing and Rent Act of 1949 Congress knew that the device of vesting power to decontrol in the Housing Expediter had been approved by this Court. Had Congress wished rent control to remain in effect with the same provision for decontrol by the Expediter it would have been simplicity itself for Congress merely to extend the operation of the Act, including said provision for decontrol. However, Congress was not satisfied with this provision of the law and extended operation of the Act only upon the addition thereto of added machinery for decontrol as set forth in Section 204 (j). The very fact that Congress added new features and methods of decontrol in addition to those already expressed in the statute shows that Congress wished and intended the statute to be extended *only* with embodiment therein of the new methods of decontrol. This accords with the expressed intention of Congress in the preamble of the Act of 1947 to terminate controls at the earliest practicable date (Petitioner's Brief, pages 33, 34).

The calculations contained in the footnote upon page 35 of Petitioner's Brief are all entirely unnecessary. The majority of the members of Congress evidenced their intention that rent control should be extended only on condition that the new methods of decontrol were available. This intention was clearly evidenced when Congress passed the Bill in a form which included Section 204 (j).

This view of the statute is well set forth in the opinion of the District Court (R. 17). As the District Court stated in its opinion, there is a "conclusive" reason for holding the law indivisible (R. 18):

"Had Congress desired and intended to continue rent control without these local option clauses it could have done so by a simple Act extending the expiration date of the then existing law."

Aside from the irrefutable logic inherent in the situation, we believe that this portion of the argument is governed by the case of *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 312. The Opinion in that case points out that the question of separability is a matter of ascertaining the intent of Congress. The presumption in favor of divisibility does not require or authorize this Court to give the statute any effect entirely different from that which would have been desired by Congress. In this case, the Housing and Rent Act of 1949 without Section 204 (j) would be vastly different from the Housing and Rent Act in its present condition.

As to Section 209, the issue of severability should present even less difficulty. We do not concede that the Act can operate effectively without Section 209 and if Sections 209 and 204 are both stricken as invalid, the entire legislation must fall. We do not believe that appellant will contend that Congress intended to control rents until June 30, 1950 without any provision for eviction of any kind under any circumstances. The studied insertion of various provisions for eviction in every rent control Act since 1942 demonstrates the impossibility of such contention.

In this Brief we have not advanced the points discussed in the remaining portion of Petitioner's Brief commencing at page 38 thereof, hence refrain from commenting thereon. Neither do we contend that the case is moot. We agree with Appellant that the issues raised herein should be decided by this Court.

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Conclusion.

We believe that the opinion of the District Court is thoroughly sound and eminently correct. We renew our prayer for affimance of the judgment of the District Court and invalidation of the Housing and Rent Act of 1949.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949

No. 334

UNITED STATES OF AMERICA, *Appellant,*

vs.

SHORELINE COOPERATIVE APARTMENTS, INC., A CORPORATION; J. M. NICHOLSON; ROBERT R. LUMSDEN; NATHAN SUCHERMAN; MILTON TIRSLEY; FRANK FERRARO; HELEN FERRARO; JOHN J. CHALMERS; SAMUEL SILVERMAN; ARTHUR J. CASEY; MAURICE LIPKIN; CHARLES E. KOCH; CHARLES H. BRANDT; CLIFFORD CULLODEN; JEROME A. CUTLER; HARRY TARLER; EUGENE B. FEINGOLD; HERBERT S. KOHN AND IRVING KALLICK, *Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLEES ROBERT R. LUMSDEN, ARTHUR J. CASEY, CLIFFORD CULLODEN AND IRVING KALLICK.

Opinion Below.

The opinion of the District Court (R. 9) has been reported in 84 F. Supp. 660.

Jurisdiction.

The judgment of the District Court was entered July 26, 1949 (R. 19). The petition for appeal was filed on August 23, 1949, and the appeal was allowed on August 23, 1949 (R. 21). Probable jurisdiction was noted by this Court of October 17, 1949. The jurisdiction of this Court is conferred by Section 1252 of Title 28 of the United States Code (Act of June 25, 1948, c. 646, 62 Stat. 928, 28 U. S. C. 1252).

Questions Presented.

The primary questions presented are:

1. Whether the "local option" provisions of Section 204 (j) of the Housing and Rent Act of 1949, unconstitutionally delegate the legislative power of Congress to state and local officials.

2. Whether Section 204 (j) is separable from the remainder of the Act.

Other Constitutional Objections.

3. Whether the Housing and Rent Act of 1949 is a constitutional exercise of the war powers of Congress.

4. Whether the eviction provisions of Section 209, or the "fair net operating income" provisions of Section 204 (b) (1), or other provisions of the Housing and Rent Act of 1949, unconstitutionally delegate the legislative power of Congress to the Housing Expediter.

5. Whether the Housing and Rent Act of 1949 violates the Fifth Amendment of the Constitution by denying to landlords a fair return on their investments.

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6. Whether the Housing and Rent Act of 1949 violates the Fifth Amendment of the Constitution by denying to the landlord an opportunity to be heard.

7. Whether the Housing and Rent Act of 1949 violates the Fifth Amendment to the Constitution by reason of various arbitrary and discriminatory provisions.

Statute and Regulation Involved.

The Housing and Rent Act of 1949, Public Law 31, 81st Cong. 1st sess., March 30th, 1949, primarily the sections referred to under questions presented above. Pertinent portions of the statute are printed at appropriate places through the body of the brief.

SUMMARY OF ARGUMENT.

I.

A. Section 204 (j) of the Rent Act of 1949 is unconstitutional because it attempts a delegation of legislative power to states, legislatures, municipalities, and governors without adequate standards. This section does not constitute a relinquishment to the states of authority over a subject over which they have concurrent power. The assumption that the states normally have the power to regulate rents is fallacious. The states normally have no such power. Furthermore, such attempted delegations involve very serious state constitutional problems, in that they attempt to confer upon municipalities, powers which they do not have under state law; upon governors powers of vetoing municipal action which they do not enjoy under state constitutions; and involve other serious problems of special legislation and discrimination.

B. None of the cases cited by the Government in its brief is analogous to the instant situation. The power sought to be delegated in the instant case is of a character which cannot be delegated. The attempt at delegation does not involve in any sense an attempted accommodation of relations between the federal and state governments, but rather a situation of abdication of federal power to the states. The power attempted to be delegated would in every instance operate in derogation of the federal power and, rather than implementing the policy of the federal legislation, in each instance serve only to nullify it.

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II.

Section 204 (j) is not separable from the balance of the Act, and accordingly the entire Act must fall. In its 1949 form, the Rent Act is simply a national local option statute, cast in negative form, permitting the states and various areas thereof to adopt rent control by inaction. Obviously if the statute were cast in the affirmative form of a local option statute, there could be no doubt that invalidation of the local option provisions must vitiate the entire act. Since the Court is concerned with substance rather than form the same result must be reached and section 204 (j) be held inseparable.

III.

Other Constitutional Objections.

1.

At the time of the enactment of the Rent Act of 1949 the so-called "war emergency" had terminated and the transition from war to peace had been effected. The present state of war is purely technical. At the time of the enactment of the Rent law of 1949 and for some time prior thereto, there was actually no housing shortage but merely a serious maldistribution of population in the available housing units.

2.

The Rent Act of 1949 is invalid by reason of unconstitutional delegations of legislative power to the Housing Expediter, including among others the delegation to him under Section 209 to prescribe not only the detail

but the policy of the law with reference to the matter of evictions; and the attempt at delegation to him of the policy as well as detail of determining "fair net operating income" under Section 204 (b) (1).

3 and 4.

The Rent Act of 1949 is invalid as denying to landlords the fair rate of return on fair investment guaranteed by the due process provision of the Fifth Amendment to the Constitution. Certainly the owner of rental properties who has made no dedication of his property to the public use, cannot be regarded as enjoying a less favorable position with reference to the constitutional right to return on his investment that that enjoyed by a public utility which has made a voluntary dedication of its property to the public use. The requirement of fair return on fair investment has been consistently and uniformly sustained by this Court. The "fair net operating income" provision of Section 204 (b) (1) does not meet the requirement.

5 and 6.

The Rent Act of 1949 is repugnant to the Fifth Amendment to the Constitution in that landlords are given no opportunity to be heard, either administratively or in court.

7.

The Rent Act of 1949 deprives landlords of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, in that it arbitrarily discriminates in favor of newly created housing units, which are entirely decontrolled, and against existing housing units which remain controlled; in that

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it discriminates in favor of certain property owners whose tenants voluntarily agreed to increases in their rentals up to 15% and against other property owners whose tenants refused so to do; in that it discriminates in favor of certain property owners who had comparatively high rental rates in effect on March 1, 1942 and against property owners who had comparatively low rental rates in effect on that day; in that it discriminates arbitrarily in favor of so-called apartment hotel owners by fixing their maximum rentals as of March 1, 1949, after a period of decontrol and adjustment of rentals to present economic conditions, and against owners of unfurnished units, furnished units, and rooming houses, whose maximum rentals are still fixed as of March 1, 1942; and in that it discriminates in favor of owners of so-called apartment hotels located in cities of less than 2,500,000 inhabitants and against the owners of such hotels in Chicago and New York City.

IV.

These appellees concur and join in the argument of appellant that this case is not moot.

ARGUMENT.

I.

SECTION 204 (j) IS UNCONSTITUTIONAL.

Introductory Analysis.

Section 204 (j) is unconstitutional as involving an improper attempt on the part of Congress to delegate its legislative powers. This is true in two principal respects: (1) That the nature of the power, i. e., war power, is such that it cannot be delegated to state and local authorities, even when accompanied by adequate standards to control its exercise; and (2) that the attempted delegation in question is so lacking in standards as to constitute a virtual abdication of legislative power to the unbridled discretion of the states. The court below has aptly characterized the attempted delegation as follows (R. 13):

> This is the first case that has come to my attention in which Congress has attempted to leave it to other legislative bodies arbitrarily to determine whether or not they would be within or without the union so far as an Act of Congress is concerned—an Act which must depend upon the war power if it has any foundation at all. I can see no difference between this situation and one in which Congress should pass a selective service law with the provision that any State which doesn't care to send soldiers may pass a law and say they did not choose to be involved, or an Interstate Commerce Act with the provision that any State that chose not to be governed thereby could declare itself out. I can see no reasonable reason to believe that an Act of Congress under its war powers can contain any such provisions as might make it inoperative at the option of any or all of the various states or subdivisions of States, by their arbitrary action and without guides, standards or specifications of facts.

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Petitioner contends (B. 12) that the validity of Section 204 (j) should not depend upon the application of the delegation doctrine; that

> Although in form a delegation, the section is in reality an answer to a practical problem in intergovernmental relations—how the United States *should turn back to the States a subject which, apart from the war emergency, normally would be a matter for state rather than federal control.* (Italics supplied.)

This entire line of argument is based upon the totally false assumption implicit in the italicized portion of the last quotation, i. e., that rent control is a normal rather than extraordinary function of government. Here petitioner speaks of "turning back" to the States the power to control rents. Later (B. 26) petitioner speaks of "relinquishment of control of rents to the states" and remarks casually that "the control of rents normally falls within the police powers of the states." The line of assumption throughout is obviously false. No government, either federal or state, has "normally" any power to control rentals of privately owned dwellings, and enjoys such powers only under extraordinary circumstances and by virtue of the existence of an emergency. *Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170; *Bowles* v. *Willingham*, 321 U. S. 503; *Woods* v. *Miller Co.*, 333 U. S. 138.

Section 204 (j) does not constitute an attempt to adjust the respective spheres of activity of the federal and state governments, or an attempt to withdraw from a field of concurrent jurisdiction and leave such field to the states. It is an attempt to delegate to the states and to the various local governments within the states, a power which they do not have—hence, a true delegation, which must stand or fall as such. As will be indicated more specifically

hereinafter, the cases cited by petitioner involve situations not analogous to that of Section 204 (j).

A. The Standards Contained in Section 204 (j) Are Clearly Inadequate.

The obvious inadequacy of the so-called "standards" contained in Section 204 (j) is emphasized by examination of the technique employed by petitioner to demonstrate their adequacy. Petitioner has considered the standards in the three subsections in reverse order and prefaced them with the standard approved by this Court for the guidance of the Housing Expediter in *Woods* v. *Miller Co.*, 333 U. S. 138. It will be noted that the standard approved in the *Miller* case and the standards contained in Section 204 (j) are thus arranged in the order of diminishing degrees of validity, and the argument made at each stage that each standard is substantially equivalent to but a simplified form of the one preceding it.

A glance at these standards in tabular form, arranged in the order used in petitioner's brief will illustrate:

> Sec. 204(c) of 1947 Act (approved in *Woods* v. *Miller Co., supra*):
> "if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met."
>
> Sec. 204(j)(3):
> "there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village."
>
> Sec. 204(j)(2):
> if a state "by law declares that Federal rent control is no longer necessary in such State or any part thereof."

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Sec. 204(j)(1), first alternative:

"that the legislature of such State has adequately provided for the establishment and maintenance of maximum rents."

Sec. 204(j)(1), second alternative:

"or has specifically expressed its intent that State rent control shall be in lieu of Federal rent control."

Before considering the various "standards" individually, several general observations are pertinent. The congressional draftsmen had before them the language of Section 204(c) and if they had intended to prescribe the same standard to control state and local option, it is reasonable to assume that the same language would have been used. The fact that substantially different language was used would seem to indicate that Congress entertained a different intention with respect to the standard subscribed.

It must be observed also that with respect to the delegation of legislative power to the Housing Expediter, Congress is dealing with a person who is presumed to have substantial experience in connection with housing and the supply and lack thereof, and to have directed him to enter an order of decontrol based upon a finding with respect to the comparative supply and demand of such commodity in the market. In dealing, however, with the state legislature, the governer, and the various local authorities, there is no basis for assuming such technical proficiency. It is reasonable to suppose that Congress intended these bodies to act as they normally do in the discharge of their respective legislative and executive functions, i. e., as policy making bodies, and not as experts peculiarly qualified to determine market conditions with respect to availability of rental units.

Of the four sets of standards prescribed in Section 204(j), in only one is there any language which even sug-

gests that anyone is to "find" anything. This is in 204(j)(3), in which the municipal governing body is required to find that "there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village" and is to be "reached as the result of a public hearing held after 10 days' notice." It seems clear that the "finding" here is not intended to be of the expert character of the finding required of the Housing Expediter, but rather of a finding reached as a result of a hearing resembling the old town meeting. Obviously, Congress contemplated a hearing for the purpose of permitting the expression of political views and the release of political opinion and pressure rather than a finding of an expert body which has informed itself by conducting hearings. It may be significant also that in providing for this public hearing and the subsequent finding of the municipal governing body, the Congress did not adopt the language which it has employed in Section 204(e)(A) to control findings of local advisory boards after public hearings. It will be noted that the language of Section 204(e)(A) prescribes exactly the same standard prescribed to govern a similar determination on the part of the Housing Expediter in Section 204(c) of the 1947 Act.[1]

The state legislatures, governors, and municipal governing bodies are not intended to make any specific findings of fact, but merely to determine as a matter of policy, or

---

[1] The language of Section 204(e)(A) reads as follows:

"(A) Removal of any or all maximum rents in the area, or any portion thereof, over which the local board has jurisdiction or with respect to any class of housing accommodations within such area or any portion thereof, if in the judgment of the local board the need for continuing maximum rents in such area or portion thereof or with respect to such class of housing accommodations no longer exists, due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met."

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politics, that they do not desire rent control to continue in their particular states or municipalities. Certainly no other conclusion can be reached by one who views realistically the events in Congress immediately prior to the passage of the Rent Act of 1949. The administration had a terrific battle to get through an extension of rent control legislation at all, a battle which many times hung in the balance. It was clearly unable to pass such a law unless it could get the support of certain Congressmen and Senators who felt that further extension of rent control was undesirable, and that it would not be acceptable to their constituents, but who were willing to yield to administration pressure, provided their own states or municipalities could be definitely assured of relief from such controls, or as the learned District Judge has put it, "declare themselves out". It is submitted that this is clearly the intention of Congress; that this is precisely the meaning of the language employed in Section 204(j) and in its various subsections, and that any attempt to distill from such language standards adequate to accompany a delegation of power and to convert the same into a mere fact-finding power is sheer sophistry.

Pertinent also to consideration of the present question are the implications of the fact that Congress has here delegated the power of decontrol in the alternative to the Housing Expediter or the state legislatures or municipalities with the approval of the Governor. The language of Section 204(c) permitting the Housing Expediter to decontrol is not merely permissive but directory. That subsection begins as follows:

> "(c) The housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense rental area, * * *"

Congress contemplates a situation where, although the Housing Expediter finds that under the standards prescribed for him, such defense rental area, or portion thereof, shall not be decontrolled, yet a state or a municipality will, notwithstanding that fact, effect such decontrol. Obviously if Congress intended the same standards prescribed for the Housing Expediter to control the actions of the states or municipalities, it might anticipate that the same result would be reached, and such dual delegation of fact-finding function would be superfluous, conflicting, and under the circumstances, illogical. The only inference which can be drawn from this situation is that Congress intended the states and municipalities to have the power to decontrol under circumstances where such power was not intended to be given to the Housing Expediter. The Government's assumption of substantial identity of standards prescribed for the Housing Expediter and for the states and municipalities is inconsistent with such inference.

It is submitted that in the light of the foregoing considerations, the argument of the Government that these various "standards" are substantially identical with those approved in *Woods* v. *Miller Co., supra,* is without merit. However, brief attention will be given to the argument of the Government upon the individual provisions, taken in the order in which the Government discusses them.

Section 204(j)(3) provides that the Housing Expediter shall terminate controls when local authorities, after public hearings and with the approval of the Governor, find that "there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village." The Government contends (B. 14-15) that this language is not distinguishable in substance from the standard approved in *Woods* v. *Miller Co., supra.* The standard approved there, from Section 204(c), specifies the basis for

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the Housing Expediter's determination, i. e., that the need for such controls no longer exists "due to sufficient construction of new housing accommodations or when the demand for rental accommodations has been otherwise reasonably met." Such specific standard is lacking in Section 204(j)(3). It is submitted that this difference is not merely one of verbiage, but of substance. Attention is invited to the fact that many intelligent, well-advised, public-minded people today feel that under existing conditions there no longer exists such a shortage in rental housing accommodations as to require rent-control anywhere; that during the actual war itself such a shortage did exist; and that the continuation of rent controls is the cause of such shortage rather than the cure therefor. This is not the policy written by Congress into the Rent Act of 1949, yet local authorities entertaining that point of view might and would in perfect accord with the "standard" set forth in 204(j)(3) effect decontrol of their particular area. Obviously, this is quite a different standard from that prescribed for the Housing Expediter himself, and is not a standard designed to carry out the legislative policy of the Act, but rather to defeat such policy by terminating such Act.

The same consideration is true, but even to a greater extent, with reference to the language of Section 204(j)(2) permitting a state legislature to decontrol the state by simply declaring that "federal rent control is no longer necessary in such state or any part thereof." The language "necessary" constitutes no standard at all, but is merely the equivalent of "desirable" or "in the public interest". It may be noted that this is the standard which always guides all state legislatures in the performance of their normal legislative functions, whether in the exercise of the police power or otherwise. The Government (B. 15-16) cites a number of cases approving as sufficiently specific

certain phrases including the word "necessary". Typical of these phrases are "public interest, convenience, or necessity" and "public convenience and necessity". Concededly these phrases are phrases of very definite and positive meaning in connection with franchise and licensing matters, defined through generations and centuries of usage, practice, and judicial interpretation. Obviously these cases are irrelevant and cannot impart to the word "necessary", standing alone, any definitive meaning of the type here contended for.

In Section 204(j)(1) there are two separate alternatives. The "standard" for the first is that the Governor shall advise the Housing Expediter "that the legislature of such state has *adequately* provided for the establishment and maintenance of maximum rents." The Government contends (B. 16-17) that the word "adequately" has the same meaning as the word "necessity" as used in Section 204(j)(2). What has been said with reference to Section 204(j)(2) is equally applicable to the word "adequately".

The second alternative in Section 204(j)(1) is that the Governor shall advise the Housing Expediter that the legislature "has specifically expressed its intent that state rent control shall be in lieu of federal rent control." The government cannot here find even a singe word out of which to attempt to spin a standard, but is forced (B. 17-18) to attempt to find some kind of a standard in the requirement that the Government shall also advise the Expediter "of the date on which such state rent control will become effective." The Government seizes upon the language "State rent control" and contends that since it must have been contemplated that such state rent control should provide some protection to the public against unduly high rents, the language "state rent control" in and of itself constitutes a standard. Such an argument is clearly without

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merit, and can be justified only upon the ground that no better argument is available.

It is apparent that only by the most strained and tortured interpretation can a standard be distilled from any of the provisions of 204(j), and that with reference to 204(j)(1) and 204(j)(2), no standard can be distilled even by such methods.

The case of *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, involved the question of the validity of the "hot oil" provision (9(c)) of the National Industrial Recovery Act of 1933. This Act authorized the President to prohibit the transportation in interstate and foreign commerce of petroleum produced or withdrawn from storage in excess of the amount permitted by state law. The "standards" in the Recovery Act were much more numerous, detailed and explicit than the "standards" of Section 204 (j) of the Housing and Rent Act, and the "declaration of policy" of the Recovery Act was more detailed than the instant Act. Nevertheless this Court invalidated the delegation. The Court said on page 421:

> The Constitution provides that "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Art. 1 § 1. And the Congress is empowered "To make all laws which shall be necessary and proper for carrying into execution" its general powers. Art. 1, § 8 Par. 18. The Congress manifestly is not permitted to abdicate, or to transfer to others, the essential legislative functions with which it is thus vested. Undoubtedly legislation must often be adapted to complex conditions involving a host of details with which the national legislature cannot deal directly. The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentali-

> ties the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. Without capacity to give authorizations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility. But the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained.

See also *Schechter* v. *United States*, 295 U. S. 494.

The delegation attempted in Section 204 (j) gives rise to a multitude of other problems regarding constitutional limitations upon state action and the character and nature of municipal corporations. We shall attempt to do little more than suggest these problems.

Section 204(j)(3), providing as it does for suspension of federal legislation by act of the municipal legislative body with approval of the governor, clearly, it seems to us, attempts to confer upon the municipality a power and to require from it an action which it can neither receive nor exercise. It is axiomatic in the law that a municipal corporation is merely a creature of the state legislature endowed by it with powers, existing at its sufferance, subject to its complete control and domination, and having and enjoying no powers whatever except those conferred upon it by the legislature.[2] It is difficult to reconcile with this basic doctrine the idea that Congress can confer additional powers upon municipal corporations.

It is conceivable that this difficulty might be cured by a

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[2] *Laramie County* v. *Albany County*, 92 U. S. 307; *Mt. Pleasant* v. *Berhalter*, 100 U. S. 514; *Mobile* v. *Watson*, 116 U. S. 289; *People's Pass R. Co.* v. *Memphis City*, 10 Wall. 38; *Joslin Mfg. Co.* v. *Providence*, 262 U. S. 668; *St. Joseph Twp.* v. *Rogers*, 16 Wall. 644; *Stewart* v. *Kansas City*, 239 U. S. 14; *Atkins* v. *Kansas*, 191 U. S. 207.

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sufficiently specific enabling act of the legislature, provided such act could be drawn without contravening other state constitutional limitations. Pennsylvania has made such an attempt in a statute which has not as yet been judicially reviewed. Act No. 372, May 11, 49, 35 P. S. 1691-1693. It seems clear, however, that the further difficulty with regard to the approval required of the governor, cannot be met by such a legislative act, although Pennsylvania has attempted that too in the statute cited. The function of approving such a municipal act obviously implies the power to disapprove and is therefore in effect a veto. The basic difficulty is that the powers of the governor of a state are customarily prescribed by the state constitution and cannot be modified by act of the state legislature, and certainly not by act of Congress, although this latter feat is attempted in Section 204(j)(3).

Even if such a state enabling act were not otherwise objectionable, it seems probable that it might be invalid as violating prohibitions against special legislation, denying equal protection of the laws, or conflicting with other constitutional limitations commonly found in state constitutions. We shall make no attempt to evaluate the constitutional difficulties implicit in the provision of Section 204(j)(3) requiring the Housing Expediter to decontrol the balance of the area after the municipality has "declared itself out" of rental control, beyond pointing out that the ultimate effect of this provision would be to permit the municipality to legislate for unincorporated territory surrounding it.

Attention is invited to the evaluation of Section 204 (j) by the Senate majority leader, Senator Lucas, in 95 Cong. Rec. (Adv. Ed.) 2985 which states:

> To say, Mr. President, that the Senate should give the governor veto power over every municipality in the

State is something I could not vote for under any circumstances. That such a provision is unconstitutional there can be no doubt.

B. Government's Contention That "the Reliance Upon State and Local Action Does Not Violate the Constitution" is Inapplicable.

In its brief the Government divides this point into two sub-headings. The first apparently stresses the idea of delegation, and the second the concept of withdrawal or relinquishment, as instrumentalities of federal and state cooperation. We feel it best in the interest of brevity and clarity to treat both aspects together.

Concededly the general proposition that the reliance upon state and local action does not violate the constitution is true when limited to proper situations such as those suggested in the Government's brief (B. 18-26). However it is submitted that the cases cited are not analogous to the instant situation. In none of those cases is there involved an attempt upon the part of Congress to delegate to a state, a municipality, or a state governer actual legislative power, as is attempted under Section 204 (j).

The cases of *United States* v. *Jones*, 109 U. S. 513, involving delegation to a state tribunal, the determination of compensation to be paid by the United States in eminent domain matters; the case of *Butte City Water Co.* v. *Baker*, 196 U. S. 119, involving use of state agencies in the disposition of mining claims on public lands; and similar cases, involve not the delegation or even exercise by the Congress of *legislative* power as such, but the exercise of the function of management of federal business and affairs in a proprietary capacity. In the portion of the *Butte City Water Co.* case quoted by the Government on Page 21 of its brief, this Court characterized the power as "not of a

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legislative character in the highest sense of the term," but as the function of an owner who "might delegate to his principal agent the right to employ subordinates, giving to them a limited discretion."

The cases referred to by the Government (B. 19) in connection with the Conformity Act, first enacted in 1789 (1 Stat. 93 R. S. § 914) involved the adoption of mere procedural matters of detail in connection with the operation of the federal courts. This did not involve the actual delegation of legislative power to the states, but an attempt early in the history of our federal system to utilize rules of procedure familiar to local judges and practitioners at a time when a comprehensive body of strictly federal procedure had not been devised and when virtually all the business of the federal courts involved matters arising under local law. Today, of course, the federal courts are controlled by the Federal Procedure Act and implementing rules, and the business of these courts is no longer so predominantly local.

It is difficult to perceive in *Hanover National Bank* v. *Moyses*, 186 U. S. 181, recognizing state exemptions in bankruptcies, any delegation of federal legislative power. Actually the federal bankruptcy court is merely liquidating the estate of the bankrupt as it finds it. The character and quantum of that estate and its availability to creditors is naturally a matter primarily governed by the state law, and it seems very doubtful if Congress would have the power under its bankruptcy laws to brush aside such state exemptions, although it probably could condition the right to have recourse to the bankruptcy law upon the voluntary waiver thereof.

Cases such as *In re Rahrer, petitioner*, 140 U. S. 545, *Clark Distilling Co.* v. *Western Md. Ry. Co.*, 242 U. S. 311,

Kentucky Whip & Collar Co. v. *Ill. Central R. Co.*, 299 U. S. 334, *Griswold* v. *President*, 82 Fed 2nd 922 (C. C. A. 5) and *Rupert* v. *United States*, 181 Fed. 87 (C. C. A. 8) involved the exercise of the power of Congress to regulate interstate commerce for the purpose of implementing the policies of various state laws having to do with liquor, distribution of prison-manufactured goods, "hot oil", illegally killed game, etc. These cases do not by any stretch of the imagination involve a delegation, relinquishment or abdication of federal power to the states, but a true accommodation of state and federal powers, each retained by the respective sovereign.

The cases cited by the Government on Page 23 and the first half of Page 24 of their brief all involve, as do some of the other cases cited under this general broad heading, the delegation of a function, not legislative but either administrative, judicial or quasi-judicial. For example, *Parker* v. *Richard*, 250 U. S. 235, involves the conferring upon a state Probate Court of the guardianship of Indians. The statute involved in *Dallemagne* v. *Moisan*, 197 U. S. 169, involves the function of arresting, obviously an administrative one, as in the case of arresting deserted seamen in *Robertson* v. *Baldwin*, 165 U. S. 275. The same is true of local enforcement of the National Prohibition Act as indicated in *Gambino* v. *United States*, 275 U. S. 310. None of these cases involved the delegation to a state or municipal legislative body of the function of performing a legislative act.

The cases of *Currin* v. *Wallace*, 306 U. S. 1; *United States* v. *Rock Royal Co-op*, 307 U. S. 533 and *Wickard* v. *Filburn*, 317 U. S. 111, all conditioning the effectiveness of a federal administrative order upon approval of a two-thirds vote of the farmers or producers participating in the particular market, are clearly not analogous to the delegation involved

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in Section 204 (j). Such provisions might be analogous to Section 209 of the 1948 Rent Act, conditioning the right of owners of cooperative apartments to evict tenants upon 65% owner participation in the cooperative venture. Obviously these cases do not involve in any sense a problem of relationship between federal and state government, or delegation or exchange of authority or functions between federal and state governments, but merely a marketing arrangement, affecting the federal government and certain citizens and residents of the United States who, also, coincidentally, are citizens and residents of particular states. While a question involving the 9th and 10th amendments, or the permissible limits of Congressional control of interstate commerce might be involved, no problem of delegation analogous to the instant situation is so involved.

The Government contends (B. 26) that in a federated system such as ours cooperative adjustments between the states and the federal government are to be favored. *Prudential Insurance Co.* v. *Benjamin*, 328 U. S. 408, is cited as authority for the proposition. That case involved a withdrawal from the field of regulating interstate commerce insofar as the insurance business was concerned, and was not inconsistent with the long line of cases relating to federal and state action in the field of interstate commerce. The decision was expressly limited to the field of interstate commerce and is not in point. In that case Congress withdrew from the field entirely and on a uniform national scale. In Section 204 (j) Congress does not contemplate withdrawal from the field, but permits state and municipal governments to alter and nullify federal control and to substitute laws inconsistent with the general purpose of the Act.

While cooperation between State and Federal governments is to be favored, it is doubtful whether Section 204 (j)

of the Act will tend to promote such cooperation. If anything, the reverse should be true. As was pointed out earlier in this brief, the Housing Expediter is directed to decontrol defense-rental areas where in his judgment the housing shortage has been reasonably met. The local option provision of 204 (j) must of necessity become operative only while in the judgment of the Housing Expediter, at least, there is still need for federal control. The state of Texas has "cooperated" by enacting a law which reads in part as follows (Chapter 472, 23 Vernon's Ann. Civ. St. Art. 1269 1.1):

> Section 1. Rent control as established by the Act of the Eighty-first Congress of the United States extending rent control for a period of fifteen (15) months from and after March 31, 1949, as further described in Housing and Rent Act of 1949, H. R. 1731, is hereby abolished in the State of Texas and is declared to be no longer needed in the State of Texas, and all Federal rent controls are hereby declared no longer needed in the State of Texas.

Any action taken by states or municipalities, whether by virtue of Section 204(j) (1), (2), or (3) is in direct conflict with the authority of the Federal Government, in the exercise of its war powers. The two governments do not act jointly, but action by the state or municipality removes the government from the field.

The War Powers are similar in nature to the powers over external affairs. In the latter field the Federal Government is supreme. In *Hines* v. *Davidowitz*, 312 U. S. 52, 68, the Court stated that the field which affects international relations is "the one aspect of our government that from the first has been most generally conceded imperatively to demand broad national authority," and that any state power which may exist "is restricted to the narrowest limits." There the Court was dealing with the question of whether

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a state statute regulating aliens survived a similar federal statute and held that it did not.

It was early decided that when the federal government has acted under the war power, the states may not constitutionally take any action in that field. *Tarble's* case, 80 U. S. (13 Wall.) 397 (1871). In that case it was held that the Supreme Court of Wisconsin could not issue a writ of habeas corpus discharging from the criminal custody of the United States a soldier who had sworn falsely as to his age upon enlistment. See 56 Am. Jur. 146. But may the Federal Congress, if it chooses, delegate a part of its war power to a state? It is necessary first to examine the nature of the war powers.

The nature of the war powers is carefully discussed in *United States* v. *Curtiss-Wright Export Corporation*, 299 U. S. 304, 315:

> The two classes of powers are different, both in respect of their origin and their nature. The broad statement that the Federal government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect of our internal affairs. In that field, the primary purpose of the Constitution was to carve from the general mass of legislative powers then possessed by the states such portions as it was thought desirable to vest in the Federal government, leaving those not included in the enumeration still in the states. *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 294, 80 L. ed. 1160, 1180, 56 S. Ct. 855. That this doctrine applies only to powers which the states had, is selfevident. And since the states severally never possessed international powers, such powers could not have been carved from the mass of state powers but obviously were transmitted to the United States from some other source. During the colonial period, those powers were possessed exclusively by and were entirely under the control of the Crown. By the Declara-

tion of Independence, "the Representatives of the United States of America" declared the United (not the several) Colonies to be free and independent states, and as such to have "full Power to levy War, conclude Peace, contract Alliances, establish Commerce and to do all other Acts and Things which Independent States may of right do."

As a result of the separation from Great Britain by the colonies, acting as a unit, the powers of external sovereignty passed from the Crown not to the colonies severally, but to the colonies in their collective and corporate capacity as the United States of America. Even before the Declaration, the colonies were a unit in foreign affairs, acting through a common agency—namely the Continental Congress, composed of delegates from the thirteen colonies. That agency exercised the powers of war and peace, raised an army, created a navy, and finally adopted the Declaration of Independence. Rulers come and go; governments end and forms of government change; but sovereignty survives. A political society cannot endure without a supreme will somewhere. Sovereignty is never held in suspense. When, therefore, the external sovereignty of Great Britain in respect of the colonies ceased, it immediately passed to the Union. See *Penhallow* v. *Doane,* 3 Dall. 54, 80, 81, 1 L. ed. 507, 518, 519. That fact was given practical application almost at once. The treaty of peace, made on September 3, 1783, was concluded between his Britannic Majesty and the "United States of America". 8 Stat. at L.—European Treaties—80.

The Union existed before the Constitution, which was ordained and established among other things to form "a more perfect Union". Prior to that event, it is clear that the Union, declared by the Articles of Confederation to be "perpetual", was the sole possessor of external sovereignty, and in the Union it remained without change save in so far as the Constitution in express terms qualified its exercise. The Framers' Convention was called and exerted its powers upon the irrefutable postulate that though the states were several their people in respect of foreign affairs were one. Compare Chinese Exclusion Case,

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130 U. S. 581, 604, 606, 32 L. ed. 1068, 1075, 1076, 9 S. Ct. 623. In that convention, the entire absence of state power to deal with those affairs was thus forcefully stated by Rufus King:

> "The states were not 'sovereigns' in the sense contended for by some. They did not possess the peculiar features of sovereignty,—they could not make war, nor peace, nor alliances, nor treaties. Considering them as political begins, they were dumb, for they could not speak to any foreign sovereign whatever. They were deaf, for they could not hear any propositions from such sovereign. They had not even the organs or faculties of defence or offence, for they could not of themselves raise troops, or equip vessels, for war." Elliot, Debates 212.

In the case of *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, the question involved was the jurisdiction of the District Court under the Judiciary Act of 1789 (Chap. 20, 1 Stat. at L. 76) which granted to that court exclusive and original cognizance of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy, where common law is competent to give it. The Act of October 6, 1917, added to the abovementioned saving clause the following words: "And to claimants the rights and remedies under workmen's compensation laws of any State." Prior to the amendment the District courts had jurisdiction of specified claims and common law actions. The amendment sought to add causes of action under workmen's compensation laws of the various states. The amendment was held unconstitutional. The Court said on page 164:

> And, so construed, we think the enactment is beyond the power of Congress. Its power to legislate concerning rights and liabilities within the maritime jurisdiction, and remedies for their enforcement, arises from the Constitution, as above indicated. The definite object of the grant was to commit direct control to the Federal government; to relieve maritime commerce

from unnecessary burdens and disadvantages incident to discordant legislation; and to establish, so far as practicable, harmonious and uniform rules applicable throughout every part of the Union.

Considering the fundamental purpose in view and the definite end for which such rules were accepted, we must conclude that in their characteristic features and essential international and interstate relations, the latter may not be repealed, amended, or changed except by legislation which embodies both the will and deliberate judgment of Congress. The subject was intrusted to it, to be dealt with according to its discretion,—not for delegation to others. To say that because Congress could have enacted a compensation act applicable to maritime injuries, it could authorize the states to do so, as they might desire, is false reasoning. Moreover, such an authorization would inevitably destroy the harmony and uniformity which the Constitution not only contemplated, but actually established,—it would defeat the very purpose of the grant. See *Sudden & Christenson* v. *Industrial Acci. Commission*, ... Cal. ..., 188 Pac. 803.

Congress cannot transfer its legislative power to the states,—by nature this is nondelegable. *Re Rahrer*, 140 U. S. 545, 560, 35 L. ed. 572, 576, 11 Sup. Ct. Rep. 865; *Marshall Field & Co.* v. *Clark*, 143 U.S. 649, 692, 36 L. ed. 294, 309, 12 Sup. Ct. Rep. 495; *Buttfield* v. *Stranahan*, 192 U.S. 470, 496, 48 L. ed. 525, 535, 24 Sup. Ct. Rep. 549; *Butte City Water Co.* v. *Baker*, 196 U.S. 119, 126, 49 L. ed. 409, 412, 25 Sup. Ct. Rep. 211; *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U.S. 194, 214, 56 L. ed. 729, 737, 32 Sup. Ct. Rep. 436.

After the above decision holding the amendment to the Judicial Code unconstitutional, Congress by the Act of June 10, 1922, attempted to remedy the defect by excluding persons other than the masters and members of the crew from the jurisdiction of the Court. The Court in *Washington* v. *Dawson & Co.*, 264 U.S. 219, nevertheless held the provisions invalid. The court repeated with approval the

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above-quoted language from the *Knickerbocker* case, *supra*, and added:

> Without doubt Congress has power to alter, amend, or revise the maritime law by statutes of general application embodying its will and judgment. This power, we think, would permit enactment of a general employers' liability law, or general provisions for compensating injured employees; but it may not be delegated to the several states * * *.
>
> This cause presents a situation where there was no attempt to prescribe general rules. On the contrary, the manifest purpose was to permit any state to alter the maritime law, and thereby introduce conflicting requirements. * * * Of course some within the states may prefer local rules; but the union was formed with the very definite design of freeing maritime commerce from intolerable restrictions incident to such control. The subject is national. Local interests must yield to the common welfare. The Constitution is supreme.

It is submitted that the exercise of war powers by the Congress of the United States, like the exercise of admiralty jurisdiction, is primarily a national matter. In an emergency all interest must serve the National welfare. Local option and local referenda are inconsistent with the exercise of national emergency powers. In the command of armies in the field there can be only one supreme commander. Divided command and divided responsibility invites disaster. So too, in the alleged war on inflation, if there should be any federal control, such control should be uniform through the land.

II.

SECTION 204 (J) IS INSEPARABLE FROM THE REMAINDER OF THE HOUSING AND RENT ACT.

In arguing that Section 204 (j) is separable from the remainder of the act, the government sets forth the following (B. 29):

> The well *establish rule* is that the invalidity of part of a law will not affect the remainder (1) if the valid provisions are capable of being given legal effect standing alone; and (2) if the legislature would have intended them to stand with the invalid provisions stricken out.

It will be noted that the government characterizes the foregoing as "the well established rule". This rule is well established and we shall consider the instant situation in the light of that rule before concluding this portion of the argument. However, the government has failed to state another very important rule which is deemed controlling in this type of situation. This rule is set forth in American Jurisprudence, vol. 11, § 161, page 855 as follows:

> One important class of cases in which questions as to the severability of valid and invalid portions of an act and the determination of the legislative intent are involved consists of statutes containing invalid exceptions and provisos. The general rule is that if such a proviso operates to limit the scope of the act in such a manner *that by striking out the proviso, the remainder of the statute would have a broader scope either as to subject or territory,* then the whole act is invalid, because such extended operation would not be in accordance with the legislative intent. (Italics supplied)

The foregoing rule is exemplified and restated by this Court in *Davis* v. *Wallace,* 257 U. S. 478, 484. In that case, the statute invalidated was one imposing a special excise

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tax upon foreign corporations doing business in the state which contained a proviso that in case of railway corporations or other public utility corporations having lines partly within and partly out of the state, the tax should be computed and assessed by a formula prescribed in the statute, which proviso the Court had found to be invalid. The language of the Court is as follows:

> Where an excepting provision in a statute is found unconstitutional courts very generally hold that this does not work an enlargement of scope or operation of other provisions with which that provision was enacted and which it was intended to qualify or restrain. The reasoning on which the decisions proceed is illustrated in *State ex rel. McNeal* v. *Dombaugh*, 20 Ohio St. 167, 174. In dealing with a contention that a statute containing an unconstitutional proviso should be construed as if the remainder stood alone, the court there said: "This would be to mutilate the section, and garble its meaning. The legislative intention must not be confounded with their power to carry that intention into effect. To refuse to give force and vitality to a provision of law is one thing, and to refuse to read it is a very different thing. It is by a mere figure of speech that we say an unconstitutional provision of a statute is 'stricken out'. For all the purposes of construction it is to be regarded as part of the act. The meaning of the legislature must be gathered from all they have said, as well as from that which is ineffectual for want of power, as from that which is authorized by law."
>
> Here the excepting provision was in the statute when it was enacted, and there can be no doubt that the legislature intended that the meaning of the other provisions should be taken as restricted accordingly. Only with that restricted meaning did they receive the legislative sanction which was essential to make them part of the statute law of the State, and no other authority is competent to give them a larger application. Had they been enacted without the excepting provision and had it been embodied in a subsequent amendatory act a different situation would be presented—one in which

> that provision would have no bearing in the meaning or scope of the others—because an existing statute cannot be recalled or restricted by anything short of a constitutional enactment.

To like effect is the decision in *Spraigue* v. *Thompson*, 118 U. S. 90, 94 in which the Court said:

> It was held, however, by the Supreme Court of Georgia in the case now before us, that so much of the section as makes these illegal exceptions may be disregarded, so that the rest of the section as there read may stand, upon the principle that a separable part of a statute which is unconstitutional may be rejected, and the remainder preserved and enforced. But the inseparable difficulty with the application of that principle of construction to the present instance is that by rejecting the exceptions intended by the Legislature of Georgia, the statute is made to enact what confessedly the Legislature never meant. It confers upon the statute a positive operation, beyond the legislative intent and beyond what anyone can say it would have enacted in view of the illegality of the exceptions. We are, therefore, constrained to hold that the provisions of section 1512 of the Code of Georgia cannot be separated so as to reject the unconstitutional exceptions merely, and that the whole section must be treated as annulled and abrogated by section 4237 of the Revised Statutes.

It is true that in the foregoing cases there was no separability clause. However, it is submitted that the language of the Court makes it clear that the well settled rule with respect to the effect of invalidity of statutes containing an invalid proviso transcends the realm of presumption, which is the only realm within which the separability clause operates. *Dorchy* v. *Kansas*, 264 U.S. 286; *Electric Bond and Shares Co.* v. *Securities and Exchange Commission*, 303 U.S. 419; *Carter* v. *Carter Coal Company*, 298 U.S. 238. The rule is further exemplified where a separability clause is present in *State* v. *Inland Empire Refineries*, 3 Wash.

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(2d) 651, 101 P. (2d) 975, Cert. Den. 311 U.S. 713, in which the Court invalidated an entire act notwithstanding the existence of a conventional separability clause. The gist of the decision is set forth in the following from the opinion:

> When Chapter 186, Laws of 1939 was passed by the legislature and signed by the governor a tax was imposed upon every distributor of petroleum products except those exempted by section 15. It would be contrary to the expressed intent of the legislature for us to sustain the act after striking down section 15 subsection (d), (e) and (f) and impose upon the persons included within those exemption clauses, the distributors whom the legislature said were not to be taxed. Section 21, Chapter 186, Laws of 1939, reads as follows: "If any section, subsection, clause, sentence or phrase of this act, including those setting forth any penalty, exemption or definition, is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act, and the Legislature hereby declares it would have enacted this act if such section, subsection, clause, sentence or phrase were omitted.

Numerous other decisions of state and inferior Federal courts to the same effect are cited to the rule quoted above from American Jurisprudence.

Applying the rule enunciated by the government (B. 29) it is felt that precisely the same result must be reached, and Section 204 (j) be held inseparable. While it is conceded that the "valid provisions are capable of being given legislative effect standing alone" it is submitted that the statute in question would have quite a different effect without the local option provisions. Six sovereign states have at this time "declared themselves out" of Federal rent control. With Section 204 (j) in the law, these six states are not controlled. With Section 204 (j) held invalid, these states would be recontrolled. It is difficult to see that this law "stands" as the same law.

The obvious intent of this rule is that where a statute is realistically and in truth separable in the sense that one portion of it can operate in substantially the same manner with the other portion declared invalid, then such invalid portion is separable. Such a case is *Electric Bond and Share Company* v. *Securities and Exchange Commission*, 303 U. S. 419, in which the direct regulation provisions of the Public Utility Holding Company Act of August 25, 1935 were deemed valid despite the invalidation of certain S.E.C. registration provisions therein. The invalidation of the registration provisions did not in any sense expand or increase the applicability or effect of the regulatory provisions of the statute. They merely constituted an additional regulatory function sought to be imposed by Congress. The same may be said of all of the other cases cited by the government in which the separability clause has been given effect. In *Highland Farms Dairy* v. *Agnew*, 300 U.S. 608, for example, a case dealing with a milk marketing act, this court, solely by way of dictum, expressed the opinion that the act itself would not be invalidated by the failure of a minor provision thereof dealing with the cancellation of certain prices in particular markets. The Court characterized the provision as "so subordinate" (300 U. S. 614).

The second requirement of the rule set forth in the government brief (B. 29) is that the legislature would have intended the remainder of the act to stand with the invalid provisions stricken out. This brings us squarely to the question of what the intention of Congress was when it adopted the Rent Act of 1949. No one who has even followed the newspaper reports of the terrific Congressional battle required to reenact a rent control law in the spring of 1949 can be so naive as to believe that the administration and the principal proponents of rent control desired the

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provisions of Section 204 (j) to be a part of the act. It is common knowledge, which is adequately documented throughout the Congressional Record for the period, that Section 204 (j) was written into the act as the result of a "deal" with Senators and Congressmen representing areas which were either clearly opposed or divided on the question of any continuation of rent control and who would not have concurred in the passage of any rent control law had they not been able to assure their constituents of their right to secure relief therefrom at any time they desired.

The Government (B. 34-36) discusses at some length the computation of votes in Congress for and against the act itself and for and against Section 204 (j). It also engages in an almost metaphysical consideration of what constitutes a Congressional majority in a situation of this kind. The government concludes apparently that these considerations should not be decisive or controlling. With this we are in accord and feel that it is wholly unnecessary to apply any such test.

We believe that a realistic view of the substance rather than the form of the effect and meaning of the Rent Act of 1949 with the local option provision of Section 204 (j) stricken therefrom will resolve all doubts. Actually, this act, as passed by Congress and approved by the President, was in and of itself nothing more nor less than a local option statute permitting state legislatures and municipal councils to adopt rent control if they so desired. It is true that the statute is cast in a negative form. Under a local option statute, in conventional form, a particular area does not come under the effective operation of the act until it takes affirmative action. In the instant case, the areas controlled under the preceding act are controlled unless they take affirmative action. It is very difficult to see that there is any difference in substance between this act as adopted

and the same act cast in affirmative form, i. e., the conventional local option act. If this act had been cast in such affirmative and conventional form, it is very difficult to believe that the government could even seriously contend for the preservation of the "remainder" of the act after the local option provisions thereof had been stricken. The effect would be grotesque. In lieu of a local option statute giving localities the right to adopt the act, the effect of the court's ruling would be to impose mandatorily the operation of such an act upon such areas. We do not believe that this Court will malign Congress by attributing to them any such intent.

The following portion from *Lewis Sutherland, Statutory Constuction,* 1904, Volume 1, page 601, is pertinent:

> A provision which states a contingency on which the act is or is not to take effect, whether it be the result of a popular vote or some other, is not independent and separable; for the intent of the law maker is therein expressly declared, and the statute cannot on principle take effect contrary to that intent, though it be expressed, in a section wholly unconstitutional.

One further consideration should be noticed. At page 29 of its Brief, the government goes to some trouble to indicate the fact that the Rent Act, prior to its enactment in 1949, constituted a complete body of law which can stand alone with Section 204 (j) stricken. It is, of course true that where an existing statute is subsequently amended and the amendment is declared invalid, the Court will normally hold such amendment to be separate. An instance of such a holding is set forth in *Frost* v. *Corporation Commission,* 278 U.S. 515, a case in which the language quoted above from *Davis* v. *Wallace, supra,* is confirmed and approved. It will be noted that parts of the quoted portions therefrom deal with this particular rule.

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Appellants desire to emphasize the fact that the instant situation does not fall within that rule. Section 204 (j) does not constitute an amendment to an existing act. The Rent Act of 1948 expired on March 31, 1949 by its own terms. Moreover, the Act of 1949 differs in material respects from the 1948 Act. In the 1949 Act, for the first time "fair net operating income" became a basic rule in determining maximum rentals which were permissible. The entire section dealing with the right to evict tenants was discarded and for the first time in a Rent Law (as distinguished from the earlier general price control law), the Housing Expediter was permitted to regulate or prohibit speculative and manipulative practices without any specifications as to grounds upon which evictions were to be obtainable. The prior act "permanently" decontrolled various types of housing accommodations. The 1949 Act imposed controls upon certain types of housing accommodations which had previously been permanently decontrolled. The United States was authorized to institute suits for treble damages. Both legally and practically the 1949 Act is a new act; the local option provisions of Section 204 (j) are an integral and inseparable part thereof; and it is submitted that such act must stand or fall as a unit.

III.

OTHER CONSTITUTIONAL OBJECTIONS.

In its brief (B. 38, *et seq.*) the appellant has grouped all other objections to the validity of the Rent Act of 1949 under one general heading. Although we desire to have it distinctly understood that by acquiescing in this grouping we do not feel that these objections are less important than those previously discussed, we shall nevertheless, in the

interest of clarity, follow the system of classification and numbering which has been set by the appellant in its brief.

1. At the time of the enactment of the Rent Act of 1949 the so-called "war emergency" had terminated.

With respect to this point, appellant suggests (B. 38) that appellees mean to imply that the exercise of war powers is limited to a period when actual fighting is in progress. This is not our position. In *Woods* v. *Miller Co.*, 333 U. S. 138, as well as in earlier cases, the Court has held that the right of Congress to exercise war powers is not terminated by the end of the "shooting war". We are of course bound by this holding.

It is our position that under the doctrine of *Woods* v. *Miller Co., supra,* the war emergency is ended and that there is not now and has not been for several years any actual shortage of rental housing; and that therefore the entire basis of the power of the federal government to regulate rents has ceased to exist.

The basic authority of Congress to keep such a law in effect is conditioned upon the continuation of a war emergency, and when such emergency ends, the legislation must necessarily become inoperative and fall of its own weight.

The opinion of Mr. Justice Holmes in *Chastleton Corporation* v. *Sinclair,* 264 U. S. 543, enunciates this position forcefully. The situation in that case is analagous to the one which confronts the present court. The rent act adopted for the District of Columbia in 1919 and approved by this Court in *Block* v. *Hirsh,* 256 U. S. 135, had been twice extended. Plaintiffs sought to enjoin the enforcement of the act as against them; and their bill had been dismissed below. This Court reversed. Mr. Justice Holmes said (p. 547):

> We repeat what was stated in *Block* v. *Hirsh,* 256

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U. S. 135, 154, 65 L. ed. 865, 870, 16 A.L.R. 165, 41 Sup. Ct. Rep. 458, as to the respect due to a declaration of this kind by the legislature so far as it relates to present facts. *But, even as to them, a court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared.* 256 U. S. 154, *Chas. Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522, 536, 67 L. ed. 1103, 1108, 27 A. L. R. 1280, 43 Sup. Ct. Rep. 630. And still more obviously, so far as this declaration looks to the future, it can be no more than prophesy, and is liable to be controlled by events. *A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though valid when passed. Perrin* v. *United States*, 232 U. S. 478, 486, 487, 58 L. ed. 691, 695, 696, 34 Sup. Ct. Rep. 387; *Missouri* v. *Chicago, B. & Q. R. Co.*, 241 U. S. 533, 539, 540, 60 L. ed. 1148, 1154, 1155, 36 Sup. Ct. Rep. 715. In *Newton* v. *Consolidated Gas Co.*, 258 U. S. 165, 66 L. ed. 538, 42 Sup. Ct. Rep. 264, a statutory rate that had been sustained for earlier years in *Wilcox* v. *Consolidated Gas Co.*, 212 U. S. 19, 53 L. ed. 382, 48 L. R. A. (N. S.) 1134, 29 Sup. Ct. Rep. 192, 15 Ann. Cas. 1034, was held confiscatory for 1918 and 1919.

The order, although retrospective, was passed some time after the latest statute, and long after the original act would have expired. In our opinion it is open to inquire whether the exigency still existed upon which the continued operation of the law depended. It is a matter of public knowledge that the government has considerably diminished its demand for employes that was one of the great causes of the sudden afflux of people to Washington, and that other causes have lost at least much of their power. It is conceivable that, as is shown in an affidavit attached to the bill, extensive activity in building has added to the ease of finding an abode. *If about all that remains of war conditions is the increased cost of living, that is not, in itself a justification of the act.* Without going beyond the limits of judicial knowledge, we can say at least that the plaintiffs' allegations cannot be declared offhand to be unmaintainable, and that it is not impossible that a full

development of the facts will show them to be true. In that case the operation of the statute would be at an end. [Italics supplied.]

It will be noted that in the original decision of *Block* v. *Hirsh*, 256 U. S. 135, 154, this Court contemplated that a time would come when the war emergency would expend itself and the rent legislation become inoperative. In *Chastleton Corporation* v. *Sinclair, supra*, the court, held that that time had come. In *Woods* v. *Miller, supra*, the court, while sustaining the Act of 1947, likewise recognized the same doctrine, and that such a time would come. It is the contention of the appellees in the instant suit that that time has come.

Appellees desire to preface their argument with respect to the termination of the war emergency and to the elimination of the housing shortage with two preliminary considerations. In the first place it is clear that while the courts are required to give great respect to legislative determinations, they are not bound by such determinations. *Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170; *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543; *Woods* v. *Miller Co., supra; Home Building and Loan Assn.* v. *Blaisdell*, 290 U. S. 398.

The second preliminary consideration is the well settled rule that the Court may take judicial notice of general economic and political conditions, matters of foreign affairs, public acts of the legislature and executive, and other matters of general information. *Jones* v. *U. S.*, 137 U. S. 202, 224. Specifically, appellants intend to ask the Court to take judicial notice of certain such matters, including particularly executive orders, proceedings before the Congress, and statistics compiled by the United States Bureau of the Census.

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A. The transition from war to peace has been effected.

In *Woods* v. *Miller Co.*, 333 U. S. 138, the complaint for injunction was filed July 11, 1947. The case was argued and decided by this Court in February of 1948. At that time the country was still in the transition from war to peace. Our occupation of Germany was still predominantly military and here at home some commodities, particularly durable goods, were still in short supply. Today, however, it is submitted that the transition from war to peace has been completed, and that, to the extent that a state of war exists, it is purely technical.

Appellees have set forth as "Appendix B" to this brief a list of treaties, statutes, executive orders, press releases, and miscellaneous data, covering the years 1947, 1948, and 1949, and indicating clearly, we believe, this transition from war to peace. These materials have been arranged under the general headings of military, international political, and international economic and social phases of transition. Many of the items listed are not of great individual significance, but serve to indicate a trend and to characterize the transition. The Court is respectfully requested to take judicial notice of the facts reflected in such data.

In *Woods* v. *Miller Co.*, 333 U. S. 138, the Court recognizes the fact that war powers cannot be continued indefinitely by keeping alive a purely technical state of war. It is submitted that only such a state of war exists today. As early as September 15, 1947 the President proclaimed treaties of peace with Italy, Romania, Bulgaria and Hungary and proclaimed also the termination of war with those countries. St. Dept. Bull. XVII, p. 771 (Oct. 19, 1947).

Certainly failure to execute formal treaties with Germany, Japan and Austria can be of no substantial significance. The war with those countries ended with their

complete surrender. They were at the time of surrender and have continued to be completely and abjectly subject to the will of the conquerors. The execution of treaties with such countries does not for all practical purposes require negotiations with them, but simply dictation of the terms of such treaties. Such negotiations as may be required are necessarily negotiations with other allied powers with respect to terms of treaties, rather than with the conquered powers themselves. This situation must be contrasted with that which prevailed at the time of the conclusion of the first war. The peace there was actually a negotiated peace, following the cessation of hostilities by armistice with a nation which had not surrendered. Such negotiations as may be now carried on with conquered nations must be viewed realistically merely as gestures of magnanimity and overtures toward kindly relations.

Appellees desire to call attention to several miscellaneous treaties and occurrences, only because they characterize the present state of international relations as "business as usual." On August 3, 1949, the Atomic Energy Commission released to the press an account of three years' distribution of isotopes to individuals and institutions for medical, agricultural and industrial purposes. Out of a total of 7613 so distributed, 588 were among foreign nations. St. Dept. Bull. XXI, pp. 250-251 (August 22, 1949).

On November 9th, 1948, a press release announced the ratification by the United States and Norway (an occupied country) of a claim convention to settle two claims of individual citizens. St. Dept. Bull. XIX, pp. 646-647 (Nov. 21, 1948).

On January 3, 1949, the Voice of America opened Washington broadcasting studios to originate direct worldwide short wave broadcasts. St. Dept. Bull. XX, p. 83 (Jan. 16, 1949).

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On August 18, 1949 the Senate unanimously ratified fishing treaties with Mexico and Costa Rica, and a Northwest Atlantic Fisheries International Convention. St. Dept. Bull. XXI, p. 355 (Sept. 5, 1949).

On January 13, 1949, the following treaties were transmitted to the Senate by the President: (1) International convention for the safety of life at sea signed at London 6/10/48; (2) Convention of World Meteorological Organization opened for signature at Washington on 10/11/47 with a protocol; (3) Inter-American convention on the granting of political rights to women, signed at Bogota, Colombia, on 5/2/48; (4) Convention on the International recognition of rights in aircraft signed at Geneva 6/19/48; (5) Protocol dated in London 8/31/48 prolonging for one year after 8/31/48 the international agreement regarding the regulation of production and marketing of sugar, signed at London 5/6/37. St. Dept. Bull. XX, p. 118 (Jan. 23, 1949).

No review is attempted in Appendix B of the extensive and well-publicized work of the United Nations. Attention is invited however to the fact that its functions are those of preserving the peace rather than settling the problems of the last war. It may be of significance that as early as December 14, 1946 a resolution of the United Nations General Assembly was adopted for the purpose of undertaking actively the problem of general disarmament. St. Dept. Bull. XV, p. 1137 (Dec. 22, 1946).

Appellees submit that the war emergency is ended and that the attempt of the Government at this late date to continue rent controls in effect upon a basis of the war powers is a mere subterfuge and inimicable to the constitutionally guaranteed rights of owners of private rental property. Attention is called to the language of Mr. Justice Jackson in his concurring opinion in *Woods* v. *Miller Co.*, 333 U. S. 138:

The Government asserts no constitutional basis for this legislation other than this vague, undefined and undefinable "war power".

No one will question that this power is the most dangerous one to free government in the whole catalogue of powers. It usually is invoked in haste and excitement when calm legislative consideration of constitutional limitation is difficult. It is executed in a time of patriotic fervor that makes moderation unpopular. And, worst of all, it is interpreted by the Judges under the influence of the same passions and pressures. Always, as in this case, the Government urges hasty decision to forestall some emergency or serve some purpose and pleads that paralysis will result if its claims to power are denied or their confirmation delayed.

Particularly when the war power is invoked to do things to the liberties of people, or to their property or economy that only indirectly affect conduct of the war and do not relate to the management of the war itself, the constitutional basis should be scrutinized with care.

B. There was no housing shortage at the time of the enactment of Rent Act of 1949 and is none now.

In *Woods* v. *Miller Co.*, 333 U. S. 138, the Court states as follows:

> The legislative history of the present Act makes abundantly clear that there has not yet been eliminated the deficit in housing which in considerable measure was caused by the heavy demobilization of veterans and by the cessation or reduction in residential construction during the period of hostilities due to the allocation of building materials to military projects.

Apparently the Court was convinced that there then existed an acute shortage of rental units. This is not surprising since the government in that case offered a substantial amount of statistical data which, being unrefuted as it was, would point to the conclusion reached by the

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Court. It is unfortunate that appellees in that case did not or were not able to make available for the guidance of the Court the results of the survey made by the United States Bureau of the Census in April of 1947. Current Population Reports, Population Characteristics, Series P-21, Report 35, together with other related reports, was prepared as the result of that survey and bears the legend "Not to be Released Until August 24, 1947." Actually these reports were never generally circulated and obviously were not in the hands of the general public until after argument in the *Woods-Miller* case, although they were available to the government attorneys.

These reports indicate comparative data for the years 1940 and 1947 with respect to housing, family units, and general distribution of the population with reference to housing needs and facilities. Had pertinent portions of these reports been called to the attention of the Court, it might well have influenced its decision with respect to the housing situation.

Prior to the Congressional hearings on extension of rent control held in 1948, Mr. John Usher of Chicago had made an exhaustive study of these reports and constructed tables and charts indicating the relationship of the data therein contained to the housing situation. Appellees have set forth at the end of the brief as "Appendix A", the following:

1. Statement of John Usher, Chicago, Illinois, read by Honorable Fred E. Busbey at hearings before subcommittee of the House Committee on Banking and Currency on HR 4662, HR 4677, HR 4728 and HR 5018, 81st Congress, 2d session, at pages 330-336, including the introductory and closing remarks of Congressman Busbey.

2. Excerpts from statement of John Usher, Hearings before subcommittee of the Senate Banking and

Currency Committee on S. 434, etc., 81st Congress, 1st Session, at pages 784-789. (Figures referred to in these excerpts are contained in Plate 2.)

3. As "Plate 1", tabulation appearing as page 5 of Bureau of the Census Report above referred to.

4. As "Plate 2", tabulation prepared by Mr. Usher from census data derived from reports above referred to.

The survey embraced 34 principal metropolitan areas in the United States. An examination of Plate 1 to Appendix A will show at a glance that with one or two minor exceptions, in every one of these metropolitan areas the percentage of increase in population as between 1940 and 1947 was less than the percentage of increase in dwelling units for the same period. At the outset this should create a substantial doubt with reference to the validity and character of the alleged housing shortage which the government pleads as the basis for the continuation of rental controls.

Attention is invited particularly to the figures for the Scranton-Wilkes Barre area. It will be noted that between 1940 and 1947 population in this area decreased 15%. During the same period dwelling units available decreased 2%. As indicated in Mr. Usher's statement set forth in Appendix A, there were an abundance of vacant housing units in 1940 in this area, as there was throughout the United States. In 1947 there was an acute housing shortage in Wilkes-Barre. The area is still a controlled area. If there was no housing shortage in 1940 in the Scranton-Wilkes Barre area, and there are substantially more dwelling units per capita there today, than there were in 1940, it is submitted that there cannot be a "housing shortage" in any true sense, but rather a maldistribution of tenancy. It is submitted also that the figures set forth in Plates 1 and 2 indicate a similar, although slightly less accentuated, situation in the other metropolitan areas.

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Mr. Usher explains very clearly in his statement set forth in Appendix A the nature of this maldistribution of tenancy, the forces that brought it about and the influences which perpetuate it at the present time. Attention is invited to the fact that the statement of Mr. Usher, which Congressman Busbey read, was a statement previously given by Mr. Usher in person at the Senate Committee Hearing, and that as indicated in the introductory and closing remarks of Congressman Busbey, this statement and the data upon which it is based, was checked by the Senate Committee against the census figures and confirmed in every particular.

Mr. Usher points out in his statement that, during the war years, because of their greater earning power and the unavailability of other commodities, for which to spend their income, the American people were able to satisfy their inborne desire for spacious and luxurious housing by expanding and occupying more space per person and per family than they are accustomed to occupying during normal times in a free market when other commodities are available and when the cost of housing is consonant with general market conditions. He indicates that this condition was accentuated by the natural tendency of landlords to rent space suitable for a family with children, to one or two persons, since the rental was fixed and operating expenses would be minimized by renting to the fewest number of persons possible. Obviously, when the veterans were demobilized, they were compelled to occupy trailers, basements, and make-shift quarters, because the population which had stayed at home had spread out and occupied all of the available housing, and the veterans were not permitted to compete for this housing in a free and open market.

We shall not attempt even to abstract in full Mr. Usher's statement but we submit that a fair reading of this statement and an impartial evaluation of the figures set forth in the accompanying plates leads inevitably to the conclusion that such housing shortage as existed when the rent acts of 1948 and 1949 were adopted was solely the result of the continued imposition of rent controls.

As Mr. Usher points out in the statement made before the Senate Subcommittee, the maldistribution of housing would be rapidly corrected by decontrol. This seems self evident. Since the maldistribution has been created by rentals disproportionately low with reference to income and general commodity prices, the cure would seem to be readjustment of these prices to bring them into conformity with the general economy. This is precisely what was done in connection with hotel apartments, which were decontrolled during the term of the 1948 Rent Act, and recontrolled under the 1949 Act, with ceilings fixed as of March 1, 1949. The result of such decontrol was a moderate increase in rentals, immediate vacancies, and the appearance of columns of apartment hotel facilities for rent at ceiling in metropolitan Sunday newspapers. These advertisements still appear in undiminished volume, even after recontrol in 1949, because the ceilings upon recontrol were moderately higher, and as a result, the so-called housing shortage with reference thereto had vanished.

Prior to removal of ceilings upon meat prices, there was, at least in metropolitan areas, a severe shortage of meat. Immediately upon decontrol, prices advanced and the meat shortage became merely a war memory. This is the pattern followed by decontrol of all commodities, with the possible exception of certain items of durable goods with reference to which readjustment took somewhat longer. No one can

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doubt that there would today be a shortage of automobiles if price controls had not been removed.

Housing is a commodity subject to the economic laws of supply and demand, precisely like every other commodity. There is no reason to believe that housing would not follow precisely the same pattern as other commodities, when decontrolled, and experience proves this to be the case in connection with decontrol of apartment hotels and decontrol of other housing in the various areas where such decontrol has been effected. Since the enactment of the 1949 Act, a number of states and areas therein have decontrolled themselves. The public press has carried the reports of the experience of these communities, and these reports have not indicated either excessive increases in rentals or severe hardship or suffering on the part of anyone.

Nowhere, in press releases, or in the Congressional Record, or in the House and Senate reports, has the Housing Expediter, or any member of the House or Senate, or any other responsible public official suggested that continuation of rent controls will solve the housing problem. There has been abundant evidence to the effect that in many areas the problem has become increasingly acute as more and more space continues to be rented to fewer and fewer people. Obviously, the housing shortage is a result of rent control. If the continued housing shortage is to serve as an excuse and justification for continued rent control, then rent control is a permanent part of our economy.

Apparently the housing expediter and Congressional proponents of continued rent control feel that the problem will eventually solve itself by new construction of public and private housing. It is true, as Mr. Usher indicates in his statement to the Senate Subcommittee set forth in Appendix A, that the last couple of years has seen a record amount

of new construction. It is also true that virtually all of the private new construction has been of single family dwellings, many of which stand idle because the unfortunate people who were "frozen out" of ordinary rental housing cannot afford to buy these homes, and because the people who can and would normally buy these homes are "frozen into" rental units with abnormally depressed prices. This group, naturally, will not buy homes until rental ceilings are brought into conformity with the general economy. If rent controls are to continue until the problem is "solved" in the sense in which the proponents of rent control use that term, it will continue until a substantial segment of the American population is living in public housing. Meanwhile, private enterprise and private capital are deterred from construction of apartment buildings, because of rent control. While it is true that at the present moment such new construction is decontrolled, there is no good reason to assume that such new construction will not be controlled at a subsequent session of Congress. At the last session, Congress recontrolled certain units previously decontrolled, and a serious attempt was made to control new construction.

Meanwhile, under the present system, owners of controlled housing are compelled to undergo the systematic confiscation of their property. As indicated in a subsequent section of this brief, the Act makes no provision for a fair return on investment. Even the provision with respect to "fair net operating income" is not practically available to the owners of small rental properties, because the amount of relief that they might secure is disproportionate to the accounting and legal services requisite to secure such relief under the involved system promulgated by the Housing Expediter, requiring supporting statistical data going back over a period of twenty years to fill out his "Form 106".

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Apparently the Housing Expediter and the proponents of rent control are not content to restore normal housing conditions, but are attempting to create a visionary utopia at the expense of the small property owner, who frequently has his entire life savings invested in his property. In an announcement made by the Housing Expediter in Cleveland, Ohio, reported in the August 18, 1949 *Wall Street Journal*, he made the following statement:

> Until a family with an income of forty dollars, fifty dollars or sixty dollars a week can buy a house without strain, we have not solved the housing problem.

2. The Rent Act of 1949 delegates legislative power to the Housing Expediter without proper standards in violation of the Constitution of the United States.

The Housing and Rent Act of 1949 delegates legislative power to the Housing Expediter in so far as it grants him unbridled and unfettered power to issue regulations having the force of law in connection with speculative and manipulative practices. The Act provides in Section 209:

> Whenever in the judgment of the Housing Expediter such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result in rent increases inconsistent with the purposes of this Act.

The Housing and Rent Acts of 1947 and 1948 specifically provided for regulation of eviction proceedings. The 1947 Act permitted actions in good faith by the landlord seeking possession for his immediate personal use, or for the imme-

diate and personal use of a member of his family. The 1948 Act, in addition to the above grounds, regulated actions by shareholders of cooperative corporations and prohibited actions for possession by such shareholders, unless 65% of the shareholders were tenants in possession.

The above quoted language of the 1949 Housing and Rent Act with reference to speculative and manipulative practices appears to have been originally used in connection with other provisions with reference to hoarding, etc., in the Emergency Price Control Act of 1942. Section 102 (d) of the Emergency Price Control Act of 1942, Title 50, App. 902 (d) provided:

> Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purpose of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quantity) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

In this connection it should be remembered that the Emergency Price Control Act was enacted shortly after the declaration of war and while there was actual danger of invasion of the continental United States. Moreover, since the measure was enacted only fifty days after the attack upon Pearl Harbor, it was impossible for Congress or for any person to know the extent of the war effort which might be needed to insure victory. Congress knew that drastic action must be taken immediately or that dangerous inflationary practices would spread beyond con-

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trol. Congress knew that hundreds of varying types of businesses must be covered and that a workable scheme for regulating the prices of thousands of differing commodities had to be devised. Furthermore Congress must have suspected that selfish individuals might attempt to profit by hoarding, speculation and "black market" operations. The methods which such persons might devise could not be foretold in advance. Thus, it was impossible for Congress by legislation to devise a statute which would cover thousands of products and foresee hundreds of schemes of manipulation and profiteering. In addition any plan devised must aid and not hinder the production of essential military goods. The only thing Congress could do and did, was to grant regulatory power to an administrative official under standards sufficient under the circumstances at the time the legislation was passed to effectuate the purposes of the Act.

Contrast the situation at the time of the enactment of the Housing and Rent Act of 1949. All controls had been removed on other commodities for a period of two years, Congress had already in prior legislation enacted specifically the grounds upon which evictions might be granted. Only one field of operations was covered, namely the renting of housing accomodations. The fear and potential danger of invasion of our country had ceased. The purpose of the 1949 Act is to decontrol maximum rents as rapidly as possible.

In the Housing and Rent Act of 1947 Congress expressed approval of eviction proceedings by a landlord who desired the premises involved for his own personal use or for the personal use of a member of his immediate family. The Act of 1948 retained the foregoing grounds for eviction and made provisions for regulating evictions *supra*. If a bona fide purchaser of an interest in real

by purchasers of shares in cooperative housing buildings. The right to evict by such purchasers was prohibited unless 65% of the shareholders were tenants in occupancy. The Act also regulated evictions in cases of governmental housing developments.

The Housing and Rent Act of 1949 repeals all of the foregoing regulations with reference to evictions, and delegates to the Housing Expediter power to prohibit or regulate manipulative and speculating practices which in his judgment may result in increases in rents contrary to the purposes of the Act. Congress instead of legislating on the subject repealed its law on the subject and delegated power to act to the Housing Expediter. In effect this was a delegation to the Housing Expediter to make laws. *Panama Refining Co.* v. *Ryan,* 293 U. S. 388; *Schechter* v. *United States,* 295 U. S. 494. Certainly the regulations actually promulgated and applying to the appellees in this case bear no relationship to any speculative or manipulative practices. Appellees in good faith and in reliance upon existing law (Housing and Rent Act of 1947) paid substantial considerations for interests in the property, and were at the time of purchase entitled to immediate possession. It is certainly not a speculative or manipulative practice to seek possession of one's own property for his own use. No increase in rents can result. Furthermore Regulation Sec. 825.6 (R. 3) as construed by the Housing Expediter is retroactive without direct or indirect authorization by the Act.

It is submitted that Section 206 of the Housing and Rent Act of 1949 delegates unbridled and unfettered legislative power to the Housing Expediter. *Panama Refining Co.* v. *Ryan, supra* and *Schechter* v. *United States,* property who desires to occupy the property for his own

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personal use, can be prohibited from doing so by a retroactive regulation of a federal administrator for a period of 18 months upon the theory that he is regulating a speculative and manipulative practice, then the Housing Expediter possesses unlimited power to prevent any action for possession by any purchaser whatever. Such power has resulted in a virtual confiscation of rights in property, and marks the end of the traditional concept of ownership of property.

Throughout the length and breadth of the Act the Housing Expediter is given such broad discretion with respect to every regulatory aspect thereof, that it is believed that the total delegation transcends anything heretofore sanctioned by the court, and is definitely in contravention of the doctrine enunciated in *Panama Refining Co.* v. *Ryan, supra*, and *Schechter* v. *U. S., Supra.* One further instance of a major delegation to the Housing Expediter requires specific mention and objection, the delegation to him of the power to fix "fair net operating income" under Section 204 (b) (1). This goes to the very essence of the Act and involves the basic right of the landlord.

A majority of Congress was unwilling to extend the Act in 1949 without the inclusion of some provision guaranteeing a reasonable return to the landlord. Congress was unable to agree concerning the form which this guarantee should take and consequently delegated that purely legislative, non-delegable question to the Housing Expediter and/or the Local Advisory Boards by the provisions of Sec. 204 (b) (1) providing for the landlord to receive a "fair net operating income." The term "fair net operating income" is one without any fixed meaning in our law or in the English language, and is not defined in the Act.

The general significance and relevancy of Section 204 (b) (1) is discussed later under the general due process argument with respect to rate of return.

3 and 4. The Act Violates the Due Process Provisions of the Fifth Amendment in That It Denies the Owner of Rental Property a Fair Return.

In *Bowles* v. *Willingham,* 321 U. S. 515, 516, a similar contention of denial of due process was raised and rejected by the Court. The Court indicated that in view of the emergency conditions under which the regulatory power had to be exercised, it was simply impossible to apply the standards which have traditionally and invariably been insisted upon by this Court with reference to computation of rate of return in public utility cases. It must be recalled that at the time of that decision the Federal government was undertaking to regulate the price of every type of commodity as well as wages and costs of various facilities. The technique employed was the only one available under the circumstances, in substance simply to "freeze" the entire economy as of a certain date and then permit relief in certain "hardship" situations. Obviously it was impossible to attempt a periodic redetermination of the multitudinous items of economic data subject to control.

In the case of *Bowles* v. *Willingham, supra,* this Court stated:

> A nation which can demand the lives of its men and women in the waging of that war is under no constitutional necessity of providing a system of price control on the domestic front which will assure each landlord a "fair return" on his property.

It should be noted also that under those circumstances of frozen economy no individual or segment of the economy

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was likely to be too seriously injured since all factors of the economy retained their relative positions. While it is true that a manufacturer could not increase the price of a shirt, it was also true that the price at which he bought his materials was frozen, that the wages he paid his employees were frozen, and that all of his items of expense were likewise frozen. The owner of rental property was in no different position from the rest of the economy. This general condition prevailed down until the end of the "shooting" war and for some brief time thereafter until the general repeal of controls.

The owner of rental property alone found himself still subject to controls. He no longer operated his business in a controlled or frozen market but in an open market where his employees and suppliers, including taxing bodies, were able to charge whatever the market would bear. He was no longer able to maintain his relative position in the economy. He found himself in a position where his own rents were still frozen on a 1941 level, and where all of his expenditures in connection with his business, as well as his own personal demands for living which had to be drawn from the operation of that business, were on a new post war level. It is common knowledge that the general price level has at least doubled since 1941.

At the time that price and rent controls were originally imposed, the right which the landlord and other business people in the economy had to have their rate of return determined in accordance with settled principles of constitutional law was for the most part a theoretical and abstract right, having few practical economic implications. Doubtless the emergency of actual war justified the temporary suspension of this right. When the war was concluded and other commodities had been decontrolled this right became a vital practical matter, and the refusal on

the part of the Government to recognize it began to operate as a flagrant confiscation of his property.

When this Court decided *Bowles* v. *Willingham, supra,* in 1944, it certainly was impossible for any machinery to be set up for the purpose of according to the landlord the fair return on fair investment guaranteed by the Constitution even to public utilities and consistently recognized by this Court. What is our situation today? Such machinery is available. Congress has written into the 1949 Act a provision for determining ceilings on rental property and presumably feels that the Housing Expediter has sufficient resources and facilities at his command to make such determinations. It is no longer impossible to accord to landlords their constitutionally guaranteed rights, and they certainly had a reasonable right to expect that if rent controls were continued in 1949, their constitutional rights would be recognized. They have not been. The provision of Section 204 (b) (1) is as follows:

> In making and recommending individual and general adjustments to remove hardships or to correct other inequities, the Housing Expediter and the local boards shall observe the principle of maintaining maximum rents for controlled housing accommodations, so far as is practicable, at levels which will yield to landlords a fair net operating income from such housing accommodations. In determining whether the maximum rent for controlled housing accommodations yields a fair net operating income from such housing accommodations, due consideration shall be given to the following, among other relevant factors: (A) Increases in property taxes; (B) unavoidable increases in operating and maintenance expenses; (C) major capital improvement of the housing accommodations as distinquished from ordinary repair, replacement, and maintenance; (D) increases or decreases in living space, services, furniture, furnishings, or equipment; and (E) substantial deterioration of the housing accommodations, other than ordinary wear and tear, or

failure to perform ordinary repair, replacement, or maintenance.

It is definitely our position that the owner of rental property, who has never made a dedication of his property to the public use, but who has had such use thrust upon him, cannot occupy a less advantageous position insofar as the quantum of his constitutional rights are concerned than that enjoyed by a public utility which has made a voluntary dedication of its property to the public use. It seems that this proposition is one of those which is too obvious to require argument. Appellees are unable to cite legal authority to support it since landlords find themselves in an anomolous position, without precedent, since it has not before been necessary to raise the issue, except in cases decided during the war at a time when, as indicated, it was a matter of necessity to suspend such rights.

The rule is well settled by this Court that a public utility is entitled to have its rates so fixed that after deducting therefrom operating expenses, including reasonable allowance for depreciation and obsolescence, the net income remaining will bear that percentage to the "rate base" which is normally earned by private industry involving equal risk at that time and place; and that the rate base must be fixed at the fair and reasonable value of the properties used and useful in the enterprise.

> See *Smyth* v. *Ames*, 169 U. S. 466, 547; *San Diego Land & Town Co.* v. *National City*, 174 U. S. 739, 757; *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19, 41, 53; Minnesota Rate Cases (*Simpson* v. *Shepard*), 230 U. S. 352, 434; *Missouri ex rel. Southwestern Bell Teleph. Co.* v. *Public Serv. Commission*, 262 U. S. 276, 287.

The rule is exemplified by the following language of this Court in *McCardle* v. *Indianapolis Water Co.*, 272 U. S. 400:

> But in determining present value, consideration must

> be given to prices and wages prevailing at the time of the investigation; and, in the light of all the circumstances, there must be an honest and intelligent forecast as to probable price and wage levels during a reasonable period in the immediate future. In every confiscation case, the future as well as the present must be regarded. It must be determined whether the rates complained of are yielding and will yield, over and above the amounts required to pay taxes and proper operating charges, a sum sufficient to constitute just compensation for the use of the property employed to furnish the service; that is, a reasonable rate of return on the value of the property at the time of the investigation and for a reasonable time in the immediate future. • • •

The Housing and Rent Act of 1949 contains no formula capable of providing a fair return to the landlord upon the reasonable value of the property used as controlled housing accommodations. While the original draft of the legislation proposed by the House of Representatives contained a provision for a "reasonable return on the reasonable value of such property" the foregoing language was eliminated during the Joint Conference. (Conference Report 332, March 28, 1949.) It seems clear that the Congress intended to provide and did provide landlords a "fair net operating income" only, without regard to the value of the landlord's investment. The relevant factors specified in the law relate only to factors constituting operating income, and as a practical matter exclude from the computation of "fair net operating income" any consideration of the reasonable value of the property used.

In *Bowles* v. *Willingham, supra,* at page 517, this Court pointed out "that during the first World War the statute for the control of rents in the District of Columbia provided machinery for securing to a landlord a reasonable rental", and "under price-fixing statutes such as the Na-

tural Gas Act of 1938" Congress "has provided for the fixing of rates which are just and reasonable in their application to particular persons or companies". This Court pointed out that Congress "departed from that pattern" when it came to the Emergency Price Control Act of 1942 and attempted to regulate prices and rents upon a class rather than upon an individual basis.

It seems that in the Housing and Rent Act of 1949 Congress has again reverted, in part at least, to price fixing upon an individual basis. In doing so, however, Congress has omitted to provide any means for providing a fair return upon the value of the property used. Owners of property used for a public purpose without the consent of the owners are clearly entitled to reasonable compensation. In *Chicago M. & St. P. Ry. Co.* v. *Minnesota,* 134 U. S. 418, at 418, this Court said:

> If the company is deprived of the power of charging reasonable rates for the use of its property, and such deprivation takes place in absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus in substance and effect, of the property itself, without due process of law, and in violation of the constitution of the United States; and, in so far as it is thus deprived, while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of the equal protection of the laws.

In the case of *Smyth* v. *Ames, supra,* this court defined the elements of a reasonable rate:

> We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stocks,

> the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case.

It is submitted that the Housing and Rent Act of 1949 is fatally defective in that the essential elements of present market value, and present and original cost of construction of the property, as well as other vital elements necessary to determine the value of the property used have been removed from the consideration of the Housing Expediter in connection with the formula for his use in determining "maximum rents". Any rentals computed without regard to this factor must of necessity be confiscatory.

It may be argued that there is no taking of property for a public use, in violation of the Fifth Amendment to the Constitution, required by the Housing and Rent Act of 1949. The *Bowles* v. *Willingham* case, *supra*, held that there was no such taking under the Emergency Price Control Act of 1942 because a provision of that law provided that nothing in the Act shall require any person to sell any commodity or to offer any accommodations for rent. The 1949 law contains a similar provision. The court in *Block* v. *Hirsh*, *supra*, stated that "the power to go out of business, when it exists, is an illusory answer to gas companies and waterworks". It is even more illusory in the case of a use fastened upon the land. Even if a landlord determined not to rent his apartments, he still would be subject to real estate taxes, interest upon indebtedness, and other fixed charges so long as he retained title to the property. It is to be noted, however, that even the right to withdraw his property from the rental market, has, for all practical purposes been denied to a landlord. Controlled Regulation

825.6 prohibits such withdrawal from the rental market until a waiting period of six months has elapsed, during which time a landlord is compelled to rent his property to tenants against his will. For this period, at least, there is a taking of property for a public use.

Appellee Lumsden purchased his interest in the property in question in March 1948. Under the Housing and Rent Act then in effect he was entitled to immediate possession provided that he desired the property for his own use. The Housing and Rent Act of 1948 and the regulations of the Housing Expediter promulgated under the Housing and Rent Act of 1949 have effectively barred appellee from occupying his own property as a dwelling and have compelled him against his will to provide housing accommodations to a member of the public and without reasonable compensation. That this constitutes a taking there can be no doubt.

5 and 6. The Rent Act of 1949 Neither Allows Hearing nor Judicial Review.

The Rent Act of 1949 is invalid for the reason that there is neither judicial review available to the landlord nor is there the right to a hearing before any administrative officer.

Nowhere in the Act is provision made for an opportunity for the landlord to be heard and the Administrative Procedure Act is specifically made inapplicable by the provision of Section 210 of the Rent Act of 1949, which reads as follows:

> Sec. 210. Section 2 (a) of the Administrative Procedure Act, as amended, is amended by inserting after "Selective Training and Service Act of 1940;" the following: "Housing and Rent Act of 1947;"

The rule is well settled beyond any doubt that a person is constitutionally entitled to be heard at some point before he

can be deprived of property by specific order directed to him. In its brief appellant concedes (B. 44-45) that the landlord is not entitled to any hearing before an order can be entered against him. Appellant uses the following language:

> If the point of this objection is that the Expediter may thereby enter an order or regulations fixing rents without consulting landlords or providing them with a hearing it is also wanting in merit since no such requirement is imposed by law. (*Bowles* v. *Willingham*, 321 U. S. at pp. 519-520).

At the point cited in *Bowles* v. *Willingham*, i. e., 321 U. S. at page 520, the Court uses the following language:

> Here Congress has provided for judicial review of the Administrator's action. To be sure, that review comes after the order has been promulgated; and no provision for a stay is made.

The judicial review referred to in *Bowles* v. *Willingham*, *supra*, is that provided under the Emergency Price Control Act of 1942 (50 U. S. C. App. 901 et seq.). ~~Title 1, Section 2 (m) of said act provides in pertinent part as follows~~:

> Any person aggrieved by any action of any agency, department officer or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department officer, or employee, may petition the district court of the district in which he resides or has his place of business for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to grant appropriate relief. The provisions of the Judicial Code as to monetary amount involved necessary to give jurisdiction to a district court shall not be applicable in any such case.

There is no similar provision in the Rent Act of 1949, and consequently the landlord has no opportunity to be heard either before the administrative officer or before the court

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with respect to the merits of his controversy. It is doubtless true, of course, that even in the absence of statutory provision the court would give relief against arbitrary action. This, however, is not, for purposes of due process, an adequate substitute for one's right to be heard upon the merits. *Southern Ry.* v. *Virginia,* 290 U. S. 190.

Obviously no right to hearing before the Housing Expediter can be implied in view of the presence in the statute of Section 206 (g) which provides as follows:

> The Housing Expediter shall not publish or disclose any information obtained under this Act that such Housing Expediter deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information unless he determines that the withholding thereof is contrary to the public interest.

With regard to this latter point, see *United States* v. *Abilene & S.R.Co.,* 265 U. S. 286. In that case this Court invalidated an order of the Interstate Commerce Commission because in entering such order the commission had relied upon parts of the annual reports filed by the carrier without the same having been formally introduced into evidence. The Court said at page 289:

> The objection to the use of the data contained in the annual reports is not lack of authenticity or untrustworthiness. It is that the carriers were left without notice of the evidence with which they were in fact, confronted, as later disclosed by the finding made. The requirement that, in an adversary proceeding, specific reference be made, is essential to the preservation of the substantial rights of the parties.
>
> The right of the carriers to insist that the consideration of matter not in evidence invalidates the order was not lost by their submission of the case without argument, and by their acquiescing in the suggestion that the presentation of a tentative report by the examiner be omitted. While the course pursued denied

to the Commission the benefit of that full presentation of the contentions of the parties which is often essential to the exercise of sound judgment, it cannot be construed as a waiver by the carriers of their legal rights. The general notice that the Commission would rely upon the voluminous annual reports is tantamount to giving no notice whatsoever. The matter improperly treated as evidence may have been an important factor in the conclusions reached by the Commission. The order must, therefore, be held void.

In view of the foregoing there would seem no escape from the conclusion that the Act is invalid as repugnant to the Fifth Amendment of the Constitution.

7. The Rent Act of 1949 Is Fatally Discriminatory.

The Rent Act of 1949 deprives landlords of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, in that it arbitrarily discriminates in favor of newly created housing units, which are entirely decontrolled, and against existing housing units which remain controlled;[1] in that it discrimi-

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[1] Section 202 (c) (3) of the Housing and Rent Act of 1949 provides that the provisions do not apply to:

"Any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are housing accommodations created by a change from a nonhousing to a housing use on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947: *Provided, however,* That any housing accommodations resulting from any conversion created on or after the effective date of the Housing and Rent Act of 1949 shall continue to be controlled housing accommodations unless the Housing Expediter issues an order decontrolling them, which he shall issue if he finds that the conversion resulted in additional, self-contained family units as defined by regulations issued by him: *And provided further* That contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect; or (B) the construction of which was completed on or after February 1, 1945, and prior to February 1, 1947, and which between the date of completion and June 30, 1947, both dates inclusive, at no time were rented (other than to members of the immediate family of the landlord) as housing accommodations;"

nates in favor of certain property owners whose tenants voluntarily agreed to increases in their rentals up to 15% and against other property owners whose tenants refused so to do;[2] in that it discriminates in favor of certain property owners who had comparatively high rental rates in effect on March 1, 1942 and against property owners who had comparatively low rental rates in effect on that day; in that it discriminates arbitrarily in favor of so-called apartment hotel owners by fixing their maximum rentals as of March 1, 1949, after a period of decontrol and adjustment of rentals to present economic conditions, and against owners of unfurnished units, furnished units, and rooming houses,[3] whose maximum rentals are still fixed as of March 1, 1942; and in that it discriminates in favor of owners of

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[2] Section 204 (b) (2) of the 1949 Act provided:

"In any case in which a valid written lease with respect to any housing accommodations was entered into and filed in accordance with the provisions of the subsection (b) as then in effect, and such lease was in effect on the effective date of the Housing and Rent Act of 1949, such housing accommodations shall be subject to the provisions of this title and, until such lease is terminated or expires, the maximum rent for said accommodations shall be the rent set forth in said lease.

Section 202 (b) (2) of the Housing and Rent Act of 1948 referred to above was:

"In any case in which a landlord and tenant (including any new tenant) on or before December 31, 1948, voluntarily enter into a valid written lease in good faith (at any rental agreed upon in the lease, but not in excess of 15 per centum over the maximum which in the absence of a lease would be in effect with respect thereto on the date of enactment of the Housing and Rent Act of 1948) with respect to any housing accommodations for which a maximum rent is in effect under this section, and such lease takes effect on or after the effective date of the Housing and Rent Act of 1948 and expires on or after December 31, 1949, and if a true and duly executed copy of such lease, with the Housing Expediter, such housing accommodations shall not thereafter be subject to any maximum rent established or maintained under the provisions of this title unless such lease is terminated before March 31, 1949.

[3] Section 204 (h) of the Housing and Rent Act of 1949 provides:

"*Provided*, That in the case of those controlled housing accommodations in hotels which were not included within the definition of controlled housing accommodations' as such definition read prior to the effective date of the Housing and Rent Act of 1949, the maximum rent shall be the rent in effect for such accommodations on March 1, 1949."

so-called apartment hotels located in cities of less than 2,500,000 inhabitants and against the owners of such hotels in Chicago and New York City. [4]

The type of discrimination involved throughout the provisions above referred to is characterized by the last one, with reference to the discrimination against apartment hotels located in cities of two million five hundred thousand inhabitants or more. This provision obviously applies only to Chicago and New York City. It will be noted that only the apartment hotels in those cities are still controlled and not other apartment hotels similarly situated in the defense-rental area. The large centrally located hotels are decontrolled anyway, inasmuch as they cater to transients. The effect of this provision is that outlying apartment hotels in the city of Chicago, for example, are controlled, whereas competing hotels, in some instances immediately across the street in suburban Evanston and Oak Park, are decontrolled. The unfairness involved in this discrimination is evident, and it seems impossible for anyone to argue that any reasonable classification is involved. It will be recalled that the unit of control in previous rent acts and under the Emergency Price Control Act has always been the rental area, including territories adjacent to the city itself. For the first time in the Rent Act of 1949 the city, which constitutes only a part of the economic unit, is singled out for discriminatory treatment.

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[4] Section 202 (c) (1) of the Housing and Rent Act of 1949 provides:

"(c) The term 'controlled housing accommodations' means housing accommodations in any defense-rental area, except that it does not include—

(Hotels)

(1) (A) those housing accommodations, in any establishment which is located in a city of less than 2,500,000 population according to the 1940 decennial census and which is commonly known as a hotel in the community in which it is located, which are occupied by persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service."

Conclusion.

In concluding, appellees desire to invite the attention of the Court to the rule which it has previously laid down and adhered to that in matters of due process the Court is not restricted to mere determinations of form, but will scrutinize the entire situation and rule accordingly. *St. Joseph Stock Yards Co.* v. *United States,* 298 U. S. 38. It is submitted that all Constitutional basis for the continued imposition of rent controls has ceased to exist and that the only purpose which Congress can serve by continuing such controls is to confer a supposed benefit upon one segment of the population at the expense of another. The tendency to yield to political pressure in such matters is frequently irresistible. For the most part the landlords principally hurt by these controls are small people of moderate means, who have secured their property through thrift and years of privation. They are not an organized, politically articulate group, and have suffered accordingly from the inequality of political pressure.

The judgment below should be affirmed.

Respectfully submitted,

KENART M. RAHN,
GEORGE S. STANSELL,
Attorneys for Certain Appellees.

APPENDIX A.

Statement of John Usher, Hearings before House Committee on Banking and Currency on H. R. 4662, etc., 80th Cong., 2nd Sess. at pp. 330-336.

Mr. Busbey: Mr. Chairman, I wish to thank you and the committee for the privilege of appearing here this morning on behalf of a very good friend of mine in Chicago, Mr. John Usher, who has made quite a study of this housing and rent problem.

He testified before the Senate Banking and Currency Committee a week ago Saturday, on January 31, and I would like to inform the committee that since his testimony the Committee on Banking and Currency of the Senate have checked his figures given in the testimony and found them to be correct.

I respectfully call your attention to the questioning that appears in the hearings of the Senate Committee after Mr. Usher had presented a prepared statement which is very enlightening.

With the permission of the committee, I would like to read the statement of Mr. John Usher. Mr. Usher was to appear in person today, but unfortunately he is confined to a hospital in Chicago and cannot be here.

This is the statement of Mr. Usher.

STATEMENT OF JOHN USHER, CHICAGO, ILL., READ BY HON. FRED E. BUSBEY.

My name is John Usher. My address is 6316 Wentworth Avenue, Chicago, Ill.

Mr. Chairman and members of the committee, I am an engineer and I have been head of the business that I operate in conjunction with my brothers for over 35 years in Chicago. In my business I have taken part in the construction of thousands of housing units in the City of Chicago. My brothers and I have personally constructed and operated hundreds of rental units varying in size from three units per building to as many as 200 in one building.

I am an owner of rental housing. I believe that rental owners are the poorest organized group in this country.

You are ordinarily inclined to think that the real-estate boards are the people to weigh and discuss this problem. Actually, such boards and associations are made up of brokers and agents, and I believe very few of these men are owners. This has been an unfortunate thing for the great mass of owners who have had no representation whatever. It is not the real-estate men who have been hurt, but the owners, the majority of whom own small buildings containing only a few rental units.

You have listened to the injustices, unfairness, and un-American actions that have been going on under rent control for the past several years. I am not going to deal with any of these matters, although they are of great importance. The approach to the housing problem I intend to give you is one facet of the picture that has been completely overlooked by most people.

Being an engineer, it is always my thought that things must work out properly mathematically; otherwise, there is something false in the picture. I intend to discuss with you the population of metropolitan Chicago as well as the exact housing situation as shown by actual Government figures. You, gentlemen, are aware that every 10 years the Bureau of Census makes a complete break-down of the population and housing throughout the United States. These figures are remarkable in their accuracy and their break-down in that they give you nearly every type of information you may desire.

Early in 1947 your Joint Congressional Housing Committee authorized the Department of Commerce to make a special survey on housing and population. That was surely a most intelligent approach to this subject. These 1947 figures were made available in the latter part of last August, but, unfortunately, they have had no publicity in the press and were not distributed, but withheld from the general public, except for those who made personal inquiry for the information.

I think I should tell you just how this survey is made so that you may know how accurate it is, and why the survey has such a significant bearing on the housing problem which, until recently, has been almost completely overlooked. The Department of Commerce has the Bureau of Census work in conjunction with the mailman in every district and he charts every type of housing accommodation

in his district showing the size, type, and all the facts about the housing accommodation. He then lists the various people living in these units, and, usually, it is unnecessary for him to make any personal inquiry because he knows who the people are, whether they are married or single, or doubled up, and so forth.

My son and I have spent a great deal of time in the last 3 months studying and analyzing the figures of 1940 and these new figures of 1947. It was necessary for us to spend considerable time in the Department of Commerce in Chicago, as well as contacting the Department of Commerce, Bureau of Census, in Washington. We now have worked out all the facts and figures necessary to prove that rent control, and rent control alone, is the entire cause of our present false housing shortage, not only in Chicago, but in all the other 31 metropolitan areas which this special survey covered.

The Bureau of the Census breaks down the population in white and nonwhite, as well as male and female, and shows married couples, single people, and all the other facts necessary in dealing with each metropolitan district.

I will talk now about only the white population and white housing because in our situation in Chicago the white population and nonwhite population, as well as the white housing and nonwhite housing, are two separate matters and have little or no influence on one another.

In 1940 we find that with people free to occupy as much housing space as they were willing to pay for, we had approximately 40,000 vacant white dwelling units. In the last 7 years we have constructed approximately 64,000 new white dwelling units. This made a total of 104,000 extra dwelling units available for any increase in white population that might occur during these 7 years.

From these 104,000 units we must subtract a large number of apartments taken out of the class of dwellings by rearranging and renting them for commercial offices such as insurance offices, doctors' offices, and so forth, in order to avoid rent control. It was also necessary to take away a certain number of fire losses and demolition of old housing units, so that by April, 1947 we find that we had only a net of 73,000 dwelling units over and above what we had in 1940 which were available for the added white population that might have come into Chicago during the past 7 years.

Now we come to the amazing fact that during the last 7 years the increase in white population amounted to only 27,000 people, and the break-down of this 27,000 increase is still more amazing when we find that with all the boys home from war there was an actual loss of 6,000 in male population, but an increase of 33,000 in female population, giving us a net increase in population of only 27,000.

Of course, these figures of 74,000 extra complete housing units and only a 27,000 female increase in population is paradoxical because we can see all around us people seeking housing and unable to get it. If it were not for the fact that these were Government figures we would not accept them to be true.

These figures are true, and a simple analysis of what took place from the spring of 1942 makes them readily understandable. What actually took place was the spreading out of the people using more space than they had ever used before because of the rents remaining low, while incomes increased tremendously. Before giving you the actual figures on this spreading out, I would like to tell you why this took place.

In 1942 rents were frozen at less than 60 per cent of the amount necessary to show a fair profit on a new comparable unit, although all other principal items in our economy were frozen at a price that would be equal to the cost plus a profit. This was a unique situation—rents frozen at slightly over one-half the proper price, and everything else at cost plus profit. Almost simultaneously with this maladjusted rent freeze came the tremendous increase in the purchasing power of the people. Thus, the present great disparity between rental housing as compared to the balance of our economy.

With the war came an increase of workers per household, also came high wages, price controls, and rationing. Very quickly, there was a housing shortage. Millions of men went into the armed forces—still, there was a housing shortage. Here we had a confusing paradox—a large oversupply in 1941, and a shortage in 1942. The more that left for war, the shorter housing became, and after 10,000,000—300,000 from Chicago—had left for war our housing shortage became a national problem. Some southern and eastern cities that lost population not only to the armed forces, but also had many of their civilians leave for the West to seek higher wages, found a housing shortage.

This paradox is explained as follows:

As the war progressed, and wages skyrocketed, people at home found themselves with surplus money. Because of rationing, they found it difficult to buy anything except the bare necessities of life. But they could and did buy for their use and enjoyment, at one-half its normal price, more housing, which was not rationed. Unconscious hoarding of housing by the renters began, and the so-called housing shortage resulted. This was the result of controlling the owners but not the renters.

American people have a great inborn desire to occupy spacious and luxurious housing. Given surplus money from the skyrocketing of wages, here was their chance to satisfy this desire. Working girls, bachelors, widows, widowers, and divorced people who shared occupancy and divided the rent, decided to have their own apartment or house under the frozen ceilings, at a price of about one-half of the proper rental. Married people without children spread out into larger apartments. Rents were fixed, costs increased, so owners, trying to economize, caused further shortage by insisting on minimum adult occupancy, regardless of the size of the unit they had to rent.

Another factor contributing to the false housing shortage is that owners of two- to eight-apartment buildings now hold vacancies off the market and find, by offering the vacancy with the sale of the building, that they can get much higher prices for the building from people who are forced to buy in order to get a roof over their head.

Other large numbers of rental housing units have been converted to commercial rental units where there is no ceiling. According to data read before the Banking and Currency Committee last June by a Midwest Senator, these last two items alone have taken 1,690,500 units out of the national rental market.

The Bureau of Census figures show clearly that millions of such spreading-out moves took place, and that these people had over-expanded into more spacious housing than they ever had enjoyed before.

By the end of 1942 nearly everyone was frozen in or out, regardless of the size of housing unit needed. Of course, this was followed by the usual grey market which is now prevalent whenever a vacancy occurs. Gentlemen, please note here that this great false housing shortage occurred

only a matter of months after rent controls were inaugurated. Since then, in the last several years, it has merely become more aggravated and it will continue to get worse.

Now here is what the figures show on the spreading out of the people.

In 1940 there were 64,000 complete white rental units occupied by one person, but in 1947 this figure increased to approximately 100,000 complete rental units occupied by one person. This was an increase of over 50 per cent in single occupancy and took up 36,000 extra dwelling units.

Today one out of seven rental dwelling units is occupied by one person. In 1940 there were 291,000 complete white units occupied by two persons, but in 1947 there were 340,000 complete units occupied by two persons. This took up another 49,000 extra units. Of course, there was a spreading out of all the other groups as well. Now, considering only these two groups, we have used up 85,000 dwelling units, wherein, heretofore, we have shown there was only a total of 73,000 of all types of dwelling units available.

Gentlemen, I could stop right here and that should be your complete answer; however, I would like to give you a few more figures.

The single and double occupancy group make up only 25 per cent of the white rental population, and they are now occupying almost 50 per cent of the white rental housing units. Heretofore, I have told you that rental housing has been going off the market in order to escape rent control. There have been 51,000 rental units in Chicago turned into the commercial, co-op, and ownership group in the last 7 years. However, the most amazing figure is the fact that there are 442,000 less people living in the remaining 732,000 white rental units.

When we consider that most of this spreading out and escaping by conversion to commercial property took place in the early part of rent control you can see how impossible it might be ever to hope to get enough rental units under rent control.

This shows we quickly used up the 73,000 total available dwelling units, plus thousands that went into commercial and other uses. Why does anyone believe that this spreading out and converting will not continue more and more when it is to the benefit of the owner in all cases to take in the least number of people regardless of the size of the housing unit he has for rent?

A fast orderly removal of rent controls is the only proper cure. This removal of rent ceilings will force those who are hoarding housing to move back into the comparative housing they had in 1941, or into what they can afford in a free market. This will produce a sufficient number of apartments to take care of all the present shortage.

The realization of a fast approaching free market will also bring forth thousands who have ample means to build or buy, who now, as renters, complacently use cheap rental and spacious housing at the expense of the owners. These are the people who should build or buy homes, not the young veteran or newlyweds who definitely want rental housing units.

Today there are a great number of married couples, widows *et al.*, living in large rental units that would like to move into smaller units, and in a free market this would occur, making space for the larger families. Under our present situation all are frozen in as well as out.

Gentlemen, if for any any reason you do not see fit to remove entirely rent controls, I cannot see how anyone could object to taking off rent controls on the renters who are hoarding housing by occupying more space than they need and more than they ever had before in a free market. I have given a great deal of thought to decontrol and I have definite ideas on how it can be done scientifically and orderly, and should you care for my opinion on the matter I will be glad to give it to you at any time.

Had rationing of housing followed controls people could not have occupied more housing than they did in 1941, and we surely would not have our false housing shortage today.

What really exists is a maldistribution of housing, with certain people enjoying more housing under rent ceilings than they need or can afford in a strictly competitive market, while great numbers of others are badly crowded or frozen out entirely, many of whom are able and willing to pay much higher rent than those now occupying these units.

The rent-control authorities insist that rent controls must stay until other Government agencies promote enough building to cure the housing shortage. The longer this theory prevails, the more serious our situation will become.

When rent controls of present housing are released, we will find a substantial increase in rents. Great numbers of people, now occupying more housing than they can afford

in a free market, will be forced to retrench, and this will result in millions of vacant housing units. In the meantime, the Government will have financed millions of new housing units which will have been sold to veterans and others based on the present high prices and false shortage.

When these vacancies occur, a market collapse of all housing values will result, and the veterans and other such purchasers will be the real losers, to say nothing of the great loss to the Government.

In connection with this, just a word about inflation. Our Government has been guaranteeing about a billion dollars a year of FHA loans. This is almost the equivalent of printing money. It is putting this billion dollars in circulation to be retired in 20 to 30 years, and the very purpose for which it is used, constructing new buildings that are not needed, will eventually plague us.

Gentlemen, consider these facts about Chicago: In the past 7 years Chicago has had the smallest percentage of increase in population of any large city in the United States, and compared to the increase in population, it has had the largest net increase in housing units of any large city in the United States. In 1940 Chicago had the least number of persons per housing unit of any large city east of the Mississippi River. It now has even more housing per person than it had in 1940.

Veterans have been greatly deceived. While they were at war, those at home spread out, and we will not allow the veterans to have any of the rental-housing units, even though they want and can afford to rent them at higher rents. They must build or buy new units at the false high prices and obligate themselves for years under a large mortgage.

Scranton-Wilkes-Barre, Pa., is the only large metropolitan area in the United States that lost population in the last 7 years. They had a great number of vacancies in 1940, and even though their population decreased 15 per cent in the past 7 years, they now have a serious housing shortage.

The false housing shortage is causing untold maladjustments of our whole economy. Producers of building material, contractors, and labor are charging top prices and profits based upon the seemingly unending demand, which they do not know is false. Removal of rent controls will slow down this false demand and create real competition, thus greatly lowering costs.

We have never before had a housing shortage in the United States. Under free enterprise there was never a time that you could not go into any large city and find a *choice* of apartments for rent for immediate occupancy. Sometimes the price was high and sometimes the price was low, but there was always rental housing available. Our present shortage is artificial and is definitely caused by rent control.

In closing, I want you to know that I am grateful for the time you have given me; yet I have given you only a very small portion of the many facts and figures which I have. This very law which was enacted to help us ease the housing shortage has actually caused it, and is making it progressively worse.

I have used Government figures and I am willing to explain and show them to any of you gentlemen who may wish to verify them. These figures should convince you that this housing shortage can be corrected only by quick, orderly removal of rent control.

The Chairman. Thank you, Mr. Congressman.

Mr. Kunkel. Mr. Busbey, these figures were checked by the Senate committee?

Mr. Busbey. I have been informed that the Senate committee has checked the figures in this statement of Mr. Usher with the Bureau of the Census and found them to be correct.

Excerpt from Statement of John Usher, Hearings before Subcommittee of the Senate Banking and Currency Committee on S. 434, etc., 81st Cong., 1st Sess. at pp. 784-789.

Gentlemen, the summary of these charts show the following changes in these 34 metropolitan areas:

(1) There was an increase of 2,582,000 families, and there were 2,642,000 dwellings available to house them.

(2) 2,018,000 families obtained separate dwellings, and 564,000 doubled up.

(3) All 2,018,000 extra families that obtained separate dwellings obtained them by purchase.

(4) There was an increase of only 105,000 rental dwellings but there was an increase of 188,000 rental units occupied by one person, so 83,000 families who were renting had to buy.

(5) Evidently, most of the extra 564,000 couples who doubled up could not or did not care to buy dwellings because there were still 335,000 unoccupied dwellings (mostly for sale only).

(6) 683,000 dwellings that were rented or vacant in 1940 had been sold and were now owner-occupied. In addition to these, 1,506,000 of the new 1,950,000 dwellings have been sold.

(7) There was an increase of 2,202,000 owner dwellings.

(8) There are 1,205,000 dwellings occupied by one person—902,000 of these are rental units. (The average rooms per rental dwelling is four.)

We would not have had a housing shortage in these 34 areas if rent control had not caused the following maldistribution, spreading out, and hoarding (with 564,000 extra couples doubled up).

	Dwellings
Increase of rental dwellings occupied by only 1 person	188,000
Increase of owner dwellings occupied by only 1 person	101,000
Unoccupied dwellings (mostly for sale only)	335,000
Total	624,000

No Real Shortage.

With 1,205,000 dwellings occupied by one person and another 335,000 unoccupied dwellings there is no housing shortage in these 34 areas. There are only 564,000 extra couples doubled up. Decontrolling the 902,000 rental units occupied by one person would surely vacate enough rental units to take care of all the extra couples doubled up if they desire to rent instead of buying any of the 335,000 unoccupied dwellings (mostly for sale only). These single people could easily get private rooms or share small apartments as they have always done before.

• • • • • •

There are millions of occupants of frozen rental units who can afford and will buy or build new houses if rent controls are removed, and I will quickly show you that these must be the principal people to buy or build any future houses that we may erect in this country. With frozen ren-

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tal unit space costing only half of present home owner space, it is easy to understand that people with money and influence will get the bargain rental units and those without money or influence will be the ones frozen out and few of these able to build or buy.

During the last 2 years we have built more individual homes in the United States than in any similar period in our history. In nearly every large city in the United States newspapers carry columns of ads offering thousands of homes of all sizes and descriptions "for sale". These homes are vacant, ready for occupancy, and yet we talk about a housing shortage. What we really have is a shortage of rental units frozen at a false low price. We shall always have a shortage of $5 bills being offered for $3. There is no shortage of houses for sale. Nearly all the frozen-out people who could raise the money have bought houses. Now, each day, they are becoming harder and harder to sell. The sale of these new homes is fast coming to a standstill because these frozen-out people are the people without money. Today, for the first time in years, we have building mechanics walking the streets without work. Of course, the people with money in the frozen rental units will not move and will not buy or build while they enjoy this bargain housing.

This housing shortage created by law is causing untold maladjustments in our whole economy. Producers of building material, contractors and labor have been charging top prices, and profits, based on the seemingly unending demand which they did not know was false. They have been misjudging maldistribution and hoarding of housing space for a true housing shortage. Removal of rent control will soon cure all these fallacies and bring about a normal, healthy building condition in this country.

PLATE 1.

Table 1.—POPULATION INCREASE BETWEEN 1940 AND 1947, NONWHITE POPULATION, AND CHARACTERISTICS OF PRIVATE HOUSEHOLDS, FOR 34 SELECTED METROPOLITAN DISTRICTS: CIVILIAN POPULATION, APRIL, 1947, AND TOTAL POPULATION, APRIL, 1940

(The 1947 statistics in these tables are subject to sampling variation. Relatively small figures are subject to particularly large sampling variation and should be interpreted with caution. See section on Reliability of estimates in accompanying text)

SERIES P-21 REPORT NUMBER AND METROPOLITAN DISTRICT	POPULATION					PRIVATE HOUSEHOLDS *						POPULATION PER PRIVATE HOUSEHOLD	
	Civilian population, 1947	Total population, 1940	Percent increase, 1940 to 1947[1]	Nonwhite civilian population, 1947		Number		Percent increase, 1940 to 1947[1]	Percent with male head married, wife present	Percent with male head, other marital status	Percent with female head	Percent veterans of World War II among male heads		
				Number	Percent	1947	1940						1947	1940
17-Akron, Ohio	423,589	349,705	21	27,343	6	118,474	95,460	24	82	4	13	19	3.6	3.7
5-Allentown-Bethlehem-Easton, Pa.	337,683	325,142	4	4,371	1	92,442	82,900	12	80	6	14	14	3.7	3.9
6-Atlanta, Ga.	498,109	442,294	13	142,888	29	137,186	119,640	15	75	4	20	24	3.6	3.7
20-Baltimore, Md.	1,306,040	1,046,692	25	294,383	22	354,732	273,780	30	74	7	19	21	3.7	3.8
12-Birmingham, Ala.	502,398	407,851	23	209,760	42	135,432	107,000	27	76	5	19	20	3.7	3.8
1-Boston, Mass.	2,549,700	2,350,514	8	51,750	2	710,550	606,300	17	78	7	20	16	3.6	3.9
24-Chicago, Ill.	4,644,640	4,499,125	3	447,370	10	1,334,025	1,246,620	7	75	8	17	17	3.5	3.6
21-Columbus, Ohio	432,304	365,796	18	40,795	9	123,902	99,860	24	77	6	18	21	3.5	3.7
34-Dallas, Texas	470,052	376,548	25	70,708	15	144,716	108,920	33	78	5	18	27	3.3	3.5
10-Denver, Colo.	471,460	384,372	23	18,496	4	148,412	114,880	29	74	8	18	26	3.2	3.3
19-Detroit, Mich.	2,702,398	2,295,867	18	348,245	13	783,797	598,100	26	82	6	12	18	3.6	3.8
30-Los Angeles, Calif.	3,916,875	2,904,596	35	240,375	6	1,242,750	928,180	34	72	7	21	22	3.2	3.1
3-Lowell-Lawrence-Haverhill, Mass.	347,880	334,969	4	1,333	-	98,487	88,360	11	71	9	20	18	3.5	3.8
14-Memphis, Tenn.	402,752	332,477	21	169,742	41	111,662	92,420	21	74	6	20	20	3.6	3.6
9-Minneapolis-St. Paul, Minn.	1,006,278	911,077	10	11,739	1	287,378	260,620	10	77	6	18	22	3.5	3.5
4-New Haven, Conn.	352,036	308,228	14	11,878	3	97,340	82,940	17	79	6	15	16	3.6	3.7
31-New Orleans, La.	601,608	540,080	11	166,894	28	167,664	146,400	15	72	8	20	22	3.6	3.7
25-New York-Northeastern New Jersey.	12,684,411	11,690,520	9	1,015,002	8	3,601,854	3,181,460	13	74	8	18	16	3.5	3.7
New York Division	9,250,875	8,707,666	6	819,450	9	2,663,550	(2)	(2)	72	8	20	19	3.5	(2)
New Jersey Division	3,433,536	2,982,854	15	195,552	6	938,304	(2)	(2)	78	6	15	14	3.7	(2)
13-Norfolk-Portsmouth-Newport News, Va.	471,034	330,396	43	141,658	30	133,433	82,860	61	76	5	17	21	3.5	4.0
18-Philadelphia, Pa.	3,372,690	2,898,644	16	439,410	13	989,980	764,080	29	78	6	19	16	3.6	3.8
8-Pittsburgh, Pa.	2,100,092	1,994,060	5	181,052	6	557,134	505,780	10	79	7	15	18	3.8	3.9
28-Portland, Oreg.	534,422	406,406	31	11,269	2	181,012	135,380	34	74	9	17	23	3.0	3.0
27-Rochester, N. Y.	468,915	411,970	13	7,098	2	133,414	114,960	16	76	6	17	18	3.5	3.6
11-Salt Lake City, Utah	245,175	204,488	20	4,830	2	68,166	55,200	23	80	5	16	24	3.6	3.7
7-San Antonio, Texas	417,010	319,010	31	25,466	6	113,118	84,240	34	77	6	18	25	3.7	3.8
26-San Francisco-Oakland, Calif.	1,989,891	1,428,525	39	102,465	5	550,187	459,660	41	72	8	20	22	3.1	3.1
16-Scranton—Wilkes-Barre, Pa.	586,458	629,581	-15	564	-	145,334	148,000	-2	72	7	21	15	3.7	4.3
15-Seattle, Wash.	602,910	458,639	33	24,090	4	194,898	154,040	27	74	9	17	22	3.1	2.9
15-St. Louis, Mo.	1,584,044	1,367,977	16	229,470	15	462,616	384,360	20	76	6	18	19	3.4	3.6
23-Toledo, Ohio	383,418	341,663	12	20,196	5	108,766	94,840	15	79	6	15	19	3.5	3.6
33-Tulsa, Okla.	213,276	188,562	13	22,323	10	64,974	(2)	(2)	78	4	18	26	3.3	(2)
1-Washington, D. C.	1,205,220	907,815	33	285,998	24	345,030	237,560	45	71	7	22	24	3.5	3.8
20-Worcester, Mass.	308,569	306,194	1	1,305	-	80,881	78,620	3	77	6	16	15	3.8	3.9
21-Youngstown, Ohio	380,897	372,428	2	29,915	8	99,355	91,720	8	80	6	14	17	3.8	4.1

[1] A minus sign (-) denotes decrease.
[2] Data not available.

*Synonymous with "Private Dwelling", as indicated elsewhere in Census Report.

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PLATE 2.

METROPOLITAN AREA	FAMILIES MARRIED COUPLES NOT HAVING EXCLUSIVE USE OF DWELLING			TOTAL DWELLINGS			TOTAL OCCUPIED DWELLINGS			VACANCIES			OWNER OCCUPIED DWELLINGS			OWNER DWELLINGS OCCUPIED BY ONLY ONE PERSON			FAMILIES OWNER DWELLINGS OCCUPIED BY TWO OR MORE PERSONS			TENANT OCCUPIED DWELLINGS			TENANT DWELLINGS OCCUPIED BY ONLY ONE PERSON			FAMILIES TENANT DWELLINGS OCCUPIED BY TWO OR MORE PERSONS		
	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE
AKRON	6900	8000	+1100	39037	42037	3000	38234	41400	3166	803	637	-166	27840	31200	3360	2052	2383	+331	25788	28817	3029	10394	10200	-194	8272	8071	-201	2122	2129	+7
ALLENTOWN-BETHLEHEM-EASTON	6200	11000	+4800	35732	39200	3468	33636	38411	4775	2096	789	-307	24695	27500	2805	1877	2669	+792	22818	24831	2013	8941	10911	+1970	7941	9460	+1519	1141	1187	+46
ATLANTA	10300	19000	+8700	121494	139267	17773	117384	136599	19215	4057	1968	-2089	48211	64798	16587	1892	2891	+999	46319	61907	15588	69173	74801	+5628	5676	6898	+1222	1949	2045	+96
BALTIMORE	20500	44000	+23500	289016	364785	75769	276679	359506	82827	12337	10905	-1432	167967	190250	22283	5168	11378	+6210	162799	178872	16073	108712	169256	+60544	10895	16995	+6100	1799	1572	-227
BIRMINGHAM	8600	15800	+7200	107211	138282	29071	104972	135356	30384	2716	2926	+210	35057	44614	31557	1277	3037	+1761	33780	41577	29816	31491	48795	+31304	6429	6042	+1399	1479	1670	+191
BOSTON	27600	49600	+22000	651192	733160	81968	646279	708550	109271	4913	2306	-2607	219192	300378	81183	11298	16450	+5152	207894	283928	75934	427087	408132	-18955	32855	48966	+16111	5649	5613	-36
CHICAGO	73900	128000	+54100	1339245	1444944	105699	1327217	1421611	94394	12028	23333	+11305	379329	515998	136669	13786	23334	+9548	365543	492664	127121	948000	905613	-42387	75559	98778	+23219	7299	7135	-164
COLUMBUS	6600	11000	+4400	103363	126198	22835	99739	123699	24160	3624	2501	-1123	41158	64493	23335	2258	2665	+411	38900	61828	22928	53273	57804	+4531	9956	6970	-2986	1393	1393	0
DALLAS	8000	12000	+4000	118941	147944	29003	109235	140236	30801	6906	3168	-3738	41660	58960	29300	4076	4664	+2588	37584	54296	26712	62575	62496	-2079	5442	1909	-1466	1613	1614	+1
DENVER	4400	9000	+4600	117077	149396	32319	111911	145588	33677	5166	3808	-2358	47618	77646	29998	2670	4481	+1811	44948	73165	28217	64031	67932	+3901	10229	12592	+2363	3606	5000	+1394
DETROIT	41200	78000	+36800	477778	716124	238346	454648	705582	250934	23130	10542	-12588	266799	483206	216407	7379	8784	+1405	259420	474422	214982	187849	221676	+33827	36442	52319	+15877	5012	8108	+3096
LOS ANGELES	32800	83000	+50200	344472	427680	83208	326644	426000	99356	6557	3750	-3107	97660	165372	67712	4334	8336	+4002	93326	157036	63710	224984	260628	+35644	59411	81162	+21751	9469	11596	+2127
LOWELL	4100	8000	+3900	42149	46293	4144	36556	39487	2931	5593	3906	-1687	30715	43214	12499	2435	3245	+810	28280	39969	11689	5841	6243	+402	4157	4495	+338	1469	1488	+19
MEMPHIS	8500	15000	+6500	93525	114492	20967	84319	111363	27044	2504	2757	+253	29194	50716	21522	1499	1984	+485	27695	48732	21037	49106	54667	+5561	6419	6975	+556	1576	1595	+19
MINNEAPOLIS - ST. PAUL	8700	22000	+13300	266498	296565	30067	254446	286711	32265	11838	9826	-2012	130498	166623	36125	5640	8736	+3096	124858	157887	33029	116677	119958	+3281	17785	14790	-2995	1249	1283	+34
NEW HAVEN	3500	8000	+4500	83623	102538	18915	81468	97340	15872	6855	4991	-1864	30568	50220	19652	1672	2449	+777	28896	47771	18875	42046	47298	+5252	9959	8980	-979	2769	2732	-37
NEW ORLEANS	12100	18000	+5900	147000	176962	29962	134674	167994	33320	4440	3528	-912	37048	55552	18504	3120	3900	+780	34928	51652	16724	43509	48181	+4672	11599	10858	-741	3566	3611	+45
NEW YORK	175900	341000	+165100	2924930	3264791	339861	2740058	3104598	364540	184872	160193	-24679	746188	1099367	353179	29776	44516	+14740	716412	1054851	338439	1993870	2004731	+10861	135466	210965	+75499	23111	23557	+446
NORFOLK-PORTSMOUTH	5200	11000	+5800	66509	89026	22517	58057	83326	25269	8452	5934	-2518	30059	54191	24132	1457	2991	+1534	28732	51200	22468	27998	29135	+1137	3811	4234	+423	1198	1273	+75
PHILADELPHIA	59500	100000	+40500	780389	956488	176099	729779	939072	209293	38435	16587	-21848	521794	557001	35207	13609	26609	+12999	508185	530392	22207	208144	381079	+172935	34902	48597	+13695	3957	5511	+1554
PITTSBURGH	27000	46000	+19000	503258	567877	64619	478164	551660	73496	10494	10452	-42	196594	259435	62841	9139	11855	+2716	187455	247580	60125	273000	273000	0	19926	16496	-3430	2554	2554	0
PORTLAND, Ore.	3600	8000	+4400	141697	165301	23604	133104	156478	23374	8563	8723	+160	76477	112490	36013	6069	8614	+2545	64497	103876	39379	46116	46716	+600	13367	17869	+4502	4999	4999	0
ROCHESTER	6000	11000	+5000	119880	126325	6445	113996	124677	10681	5985	2911	-3074	51865	76055	24190	2130	2665	+535	49615	73390	23775	62090	47837	-4253	6977	9220	+2243	1571	1493	-78
SALT LAKE CITY	2000	4000	+2000	57189	77762	20573	54891	69561	13170	2298	1701	-597	36048	49596	13548	1641	2730	+1089	34407	46866	12459	22427	21445	-982	2811	2799	-12	2201	2167	-34
SAN ANTONIO	4700	11000	+6300	86289	116416	30127	81935	112998	31063	5054	3638	-1416	34066	68204	34138	2115	3196	+1081	31951	65008	33057	42545	44524	+1979	9804	4318	-452	4266	4025	-241
SAN FRANSISCO	10100	29000	+18900	415028	466118	51090	405978	464778	58800	30518	14343	-16175	138039	264842	126803	13956	23394	+9438	124083	241448	117365	174669	224168	+49499	20071	57835	+37764	2459	2778	+319
SCRANTON-WILKES BARRE	11600	14000	+2400	47184	49803	2619	44954	49524	4570	2230	2478	+248	43778	47890	4112	3028	5452	+2424	40750	42438	1688	8407	7344	-1063	3382	4418	+1036	1206	1206	0
SEATTLE	3300	8000	+4700	164298	220096	55798	153039	194858	41819	11046	7722	-3324	76131	120796	44665	6521	8712	+2191	69610	112084	42474	77098	73695	-3403	22284	16979	-5305	5968	5322	-646
ST. LOUIS	19600	28000	+8400	409734	470506	60772	385774	454904	69130	24231	8970	-15261	192764	245284	52520	2939	11242	+8303	189825	234042	44217	241469	246695	+5226	26979	26234	-745	3155	3300	+145
TOLEDO	5300	9000	+3700	99611	110976	11365	95360	108664	13304	3651	2312	-1339	47864	68272	20408	2496	3740	+1244	45368	64532	19164	47228	40232	-6996	4881	4316	-565	1955	1676	-279
TULSA		4000	4000	36147	46402	9555	32972	44408	11436	3136	1559	-1581	23875	38795	14920	1188	2184	+996	21687	36561	14874	10132	16148	+6016	982	2056	+1074	227	238	+11
WASHINGTON D.C.	24300	40000	+15700	355778	360916	+5138	331669	343999	+12330	15164	7526	-7638	99578	135896	+36318	2358	4512	+2154	96220	131384	+35164	148034	212980	+64946	16217	16814	+597	1387	1386	-1
WORCESTER, Mass.	2400	7000	+3600	79821	83090	+3269	77462	80852	+3390	2619	1238	-1401	28721	31135	+2402	1583	1566	-17	27180	29568	+2388	48139	44707	-434	2759	2754	-5	1570	1574	+4
YOUNGSTOWN	9000	12000	+6000	92495	100657	+7162	88250	99355	+7105	12245	1302	-57	49464	67089	+17626	1901	2926	+1025	46693	64263	+17570	49256	52437	+3181	4177	4774	+597	1579	1588	+9
TOTALS																													
COLUMN	1 2 3 A			1 2 3 B			1 2 3 C			1 2 3 D			1 2 3 E			1 2 3 F			1 2 3 G			1 2 3 H			1 2 3 I			1 2 3 J		

THIS TABLE CONTAINS CERTIFIED COPIES OF U.S. GOVERNMENT BUREAU OF CENSUS FIGURES ON HOUSING AND POPULATION PROPERLY ARRANGED TO SHOW THE EXACT STATUS OF OUR HOUSING PROBLEM IN 1940 AND IN 1947. IT ALSO SHOWS THE EXACT CHANGES THAT TOOK PLACE DURING THE LAST SEVEN YEARS, MOST OF THOSE BEING YEARS UNDER RENT CONTROL.

EACH METROPOLITAN DISTRICT INCLUDES THOSE SURROUNDING SUBURBS WITHIN COMMUTING DISTANCE OF EACH CITY EVEN THOUGH THE SUBURBS MAY BE LOCATED IN AN ADJOINING STATE.

IN CALCULATING FAMILIES AS SHOWN IN COLUMNS "G" AND "J", WE HAVE USED THE MOST LIBERAL INTERPRETATION OF THE WORD BY FIGURING FAMILIES TO BE ANY TWO OR MORE PEOPLE LIVING IN A DWELLING; EVEN TWO UNRELATED SPINSTERS OR TWO UNRELATED BACHELORS ARE FIGURED AS A FAMILY.

IN DEFINING A DWELLING USED IN THIS TABLE, WE HAVE ENTIRELY EXCLUDED ROOMING HOUSES, HOTELS, DORMITORIES, LIGHT HOUSEKEEPING ROOMS, TRAILERS, ETC. IN OTHER WORDS, THE FIGURES HEREIN ON DWELLINGS MEAN A DWELLING WITH UTILITIES AND FACILITIES FOR PRIVATE FAMILY LIFE.

TOTAL FAMILY INCREASE = COLUMN A^3 PLUS G^3 PLUS OR MINUS J^3.

AVAILABLE DWELLINGS = COLUMN B^3 PLUS D^1.

DWELLINGS THAT WERE RENTED OR VACANT IN 1940 BUT HAVE SINCE BEEN SOLD = $B^3 - D^2 - (E^3$ IF THERE HAS BEEN AN INCREASE IN RENTAL DWELLINGS) SUBTRACTED FROM E^3.

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APPENDIX B.

(Unless otherwise noted, all citations are to State Department Bulletins.)

I. MILITARY TRANSITIONS

1. *Termination of and/or transfer of powers from wartime agencies to normal peacetime agencies.*

Transferring from Military and other Government Agencies to Atomic Energy Commission property and personnel dealing in fissionable material. 12 Fed. Reg. 37 (1-3-47).

War Damage Corp. Charter amended so as not to have succession beyond 1-22-47 except for purposes of liquidation. 12 Fed. Reg. 407 (1-21-47).

Liquidation of CPA not later than 12-31-47 ordered. 12 Fed. Reg. 554 (1-28-47).

Liquidation of Office of War Mobilization and Reconversion ordered to be completed by 6-30-47. 12 Fed. Reg. 885 (2-7-47).

Abolishes Board of War Communications and transfers records, etc., to Federal Communications Commission. 12 Fed. Reg. 1363 (2-26-47).

Revocation and cancellation of *all* orders and directives of Board of War Communications still in effect. 12 Fed. Reg. 1683 (3-12-47).

Liquidation of CPA accelerated.

Liquidation of OPA accelerated.

Liquidation of Office of War Mobilization and Reconversion. 12 Fed. Reg. 1858 (3-20-47).

As part of program to encourage continued development and voluntary installation of radar as a navigational aid aboard ships FCC announced (2-5-47) 5 year licenses on a regular basis will be issued for operation of acceptable shipboard radar as soon as rules and regulations can be prescribed. 12 Fed. Reg. 1953 (3-25-47).

Removal of Treasury Department controls on importation of *all* currency. XVI, 671 (4-13-47).

United Nations Relief and Rehabilitation Administration operations terminated. XVII, 106 (7-13-47).

Termination of Advisory Committee on occupied areas affairs by State Department Office of Assistant Secretary for occupied areas will take over functions. XIX, 811 (12-26-48).

U. S. Atomic Energy Commission authorized to perform and exercise all functions and powers vested in Secretaries of War, Treasury, and Agriculture, and RFC. 12 Fed. Reg. 1259 (2-25-49).

Termination of Foreign Liquidation Commission on 6-30-49 announced by State Department on 3-24-49. Agency disposed of approximately $10,300,000 (procurement cost) war surplus in foreign areas, realizing 20% thereof, or about $2,000,000,000, for some 4,000,000 types of items on hand. Foreign Liquidation Commission has about $13,000,000 (procurement cost) non-combat war surplus. Predecessor agency began existence February 9, 1945, as Office of Army-Navy Liquidation Commissioner. XX, 503 (4-17-49).

Foreign Liquidation Commissioner of State Department requests bids for several thousand tons of surplus war scrap located on Marshall Islands, bids to be received by 3-5-49. Bidders must warrant scrap will be used in domestic economy. XX, 116 (7-23-49).

2. *Relaxation of controls over alien property, etc.*

Announcement by Secretary of Treasury that Italy, Bulgaria, Hungary and Rumania no longer deemed "enemy nationals" under general ruling No. 11, as part of unblocking procedure. XVIII, 120 (1-25-48).

Jurisdiction over blocked assets transferred from alien property custodian, Treasury Department, etc., to Attorney General as of midnight

9-30-48. Executive Order 9989—13 Fed. Reg. 4891 (8-20-48).

Control of Foreign Assets in United States ended 9-30-48—ending more than 8 years activity of Treasury in this field beginning with Freezing Order of April 1940. XIX, 472 (10-10-48).

3. *Settlement of war claims, lend-lease accounts, etc.*

United States—Polish Agreement on compensation claims. XVI, 28 (1-5-47).

War damage compensation for American Nationals in France agreed upon. XVI, 166 (1-26-47).

Austrian Restitution Laws (three in all) re restitution of property taken under National Socialist Regime to original owners or their heirs. XVI, 669 (4-13-47).

Netherlands—U. S. War accounts settlement signed 5-28-47. XVI, 1131 (6-8-47).

Understanding reached between Allied and Swedish Governments on German holdings in Sweden. (Estimated holdings in Sweden $105,-310,800). XVII, 162 et seq. (7-27-47).

Procedure for filing war claims in Singapore and Malaya set up by Malayan War Damage Claims Commission. XVII, 230 (8-3-47).

Netherlands grants compensation for war damage to American property on basis of equality with Netherlands Nationals. XVII, 332 (8-17-47).

Memorandum of understanding between United States and Italy re settlement of certain wartime claims and related matters. XVII, 372 (8-24-47).

Procedure for filing war claims in North Borneo, Sarawak and Buenei announced by Borneo War Damage Claims Commission. XVII, 648 (9-28-47).

Establishment of "Gold Commission" to determine share of claimant governments in looted gold in Germany by France, United Kingdom and United States. XVII, 706, (10-5-47).

Procedure announced for recovery of identifiable property and registration of claims for war damage to American property in Hong Kong. XVII, 884 (10-26-47).

Protocol signed implementing Paris Conference decision to permit Austria to share in distribution of monetary gold looted by Germany—11-4-47. XVII, 959-60 (11-16-47).

Procedure announced for filing war claims in Greece. XVII, 995 (11-23-47).

Procedure announced for filing war claims in Tunisia. XVII, 1052 (11-30-47).

Procedure announced for filing war claims in Burma. XVII, 1089 (12-7-47).

Procedure announced for filing claims for property lost in Netherlands Indies. XVII, 1090 (12-7-47).

Agreement relating to resolution of conflicting claims to German enemy assets signed by United States, Canada, and Netherlands 12-4-47. XVII, 1192 (12-14-47).

Procedure announced for filing war claims in Poland. XVII, 1196 (12-14-47).

Procedure announced for filing claims of American Nationals against Bulgaria under Treaty. XVII, 1270 (12-28-47).

Protocol signed permitting Italy's participation in distribution of monetary gold looted by Germany. XVII, 1269 (12-28-47).

Procedure for filing declaration of war losses in Belgium announced. XVIII, 279 (2-29-48).

United States and Norway sign lend-lease settlement agreement 2-24-48. XVIII, 306 (3-7-48).

Procedure for filing claims for war damage compensation for American Nationals in Rumania established. XVIII, 316 (3-7-48).

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Procedure for filing claims with Bulgaria, Rumania and Hungary for restoration of legal rights and interests of American Nationals in Hungary as they existed on 9-1-39 announced. XVIII, 356 (3-14-48); and 485 (4-11-48).

Procedure for filing war claims in Luxembourg announced. XVIII, 355 (3-14-48).

United States interim directive issued re restitution of looted property in Japan—3-17-48. XVII, 482 (4-11-48).

Settlement of lend-lease account with Brazil on 4-15-48 announced. XVIII, 552 (4-25-48).

Procedure for filing claims against Italy by United States Nationals who owned property in Italy during war announced and $5,000,000 check presented to and accepted by United States from Italy to satisfy such war claims not otherwise compensated for. XVIII, 584 (5-2-48).

Luxembourg signs agreement relating to resolution of conflicting claims to German enemy assets. Fifth country so to sign. (Canada, Netherlands, and United States signed 12-5-47; Belgium signed 1-5-48). XIX, 25 (7-4-48).

Agreement reached re settlement of lend-lease and reciprocal aid accounts in the United Kingdom. (Modifies and supplements earlier agreements of 12-6-45 and 2-27-46). XIX, 143 (8-1-48).

Agreements signed by United States and Yugoslavia on 7-19-48 re settlement of United States property nationalized by Yugoslavia and other outstanding pecuniary claims and for lend-lease and pre-UNRRA aid to Yugoslavia. Yugoslav assets also unblocked. XIX, 137 et seq. (8-1-48).

Procedure for filing claims for compensation for war losses in Morocco announced 8-3-48. XIX, 211 (8-15-48).

Procedure for filing war claims for looted property in Japan announced. XIX, 245 (8-22-48).

Yugoslavia recognizes as international obligation the dollar bonds issued by predecessor Yugoslav Government, and will consider means of discharging them when her "economic condition—and her foreign exchange position permit." XIX, 301 (9-5-48).

Czchoslovakia settled lend-lease account 9-16-48. XIX, 413 (9-26-48).

Yugoslav deposits $17,000,000 with United States State Department to pay for settlement of American property nationalized in Yugoslavia and other pecuniary claims between two governments. XIX, 413 (9-26-48).

China makes 2nd annual payment of $2,824,930.75 to United States on lend-lease pipeline agreement 10-13-48. XIX, 527 (10-24-48).

Procedure for filing claims with Finland for losses caused by transferring German property in Finland to USSR. XIX, 647 (11-21-48).

Procedure for filing war claims for restitution of identifiable property located in United States Zone of Germany (exclusive of Berlin) announced 11-10-47. XIX, 646 (11-21-48).

Time limit to file with Malayan War Damage Claims Commission for war damage to American property in Singapore and Federation of Malaya informally extended. XX, 87 (1-16-49).

Agreement with Italy completed re settlement of obligations to former Italian prisoners of war under Geneva prisoners of war convention of 1929, and $22,000,000 paid for full release 1-14-49. XX, 116 (1-23-49).

On 3-14-49, settlement of wartime claims and accounts effected between Canada and United States. XX, 397 (3-27-49).

Two agreements signed with France on 3-14-49 finally settling miscellaneous residual financial and shipping matters arising out of operations during and immediately after war, also residual

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lend-lease surplus property claims. XX, 392 (3-27-49).

Agreement entered into with Yugoslavia re settlement of following claims:

(1) U. S. claim for destruction of jeep.
(2) U. S. claim for destruction of Air Force transport plane by gunfire. (Indemnity of $150,000 already paid for loss of life.)
(3) Claims of U. S. Nationals arising from agrarian reforms of August, 1945.
(4) Claims of U. S. Nationals arising from nationalization program.

Yugoslavia pays $17,000,000 to United States and distribution thereof among claimants sole concern of United States under agency set up in State Department as International Claims Commission.

Sets pattern for future claims settlements.

Excerpts from H. Rep. No. 81st Cong. 1st Sess. 6-9-49.

United States, United Kingdom, France and Poland signed protocol whereby Poland is permitted to participate in distribution of monetary gold looted by Germany. XXI, 71 (7-18-49).

Allied Kommandatura of Berlin announces new law for restitution of certain identifiable property to victims of Nazi oppression taken between 1-30-33 and 5-8-45. XXI, 273 (8-22-49).

Laws for filing claims in Germany announced by United States High Commissioner in accordance with laws passed by four German Laender of Bavaria, Hesse, Bremen, Wurthembergbaden. XXI, 591 (10-17-49).

4. *Relaxation of military controls in Germany and Japan.*

Assistant Secretary Hilring elected chairman of Bi-Zonal Supplies Committee (in Germany). XVI, 29 (1-5-47).

Relaxation of restrictions against business and

commercial communication with Germany and Japan. XVI, 74 (1-12-47).

Abolition of Allied Commission for Italy. XVI, 287 (2-16-47).

License restrictions lifted on trading with Germany and Japan. XVI, 496 (3-16-47).

Relaxation of conditions affecting civilian communications between United States and British and American Zones in Germany. XVI, 671 (4-13-47).

Arrangements made for commercial banking in Japan. XVI, 718 (4-20-47).

Provisions for facilitating restitution of foreign property holdings in Japan. XVII, 49 (7-6-47).

Policy decision adopted on reduction of Japanese Industrial War Potential. XVII, 513, et seq. (9-14-47).

Remittance facilities between United States and Japan established through commercial banking channels, within certain limits (up to $1000 per month to one person, etc.). XVII, 1059 (11-30-47).

Regulations relaxed regarding trade with Japan by American businessmen. XVIII, 254 (2-22-48).

First law of currency—reform plan in Germany effective 6-20-48—invalidates old German currency, establishes rules for conversion to new. XVIII, 835 (6-27-48).

International authority for the Ruhr established by Belgium, France, Luxembourg, Netherlands, United Kingdom and United States (6 Power) to make division of coal, coke, and steel from Ruhr as between German consumption and export, etc.,—draft agreement completed at London 12-28-48. XX, 43 et seq. (1-9-49).

Radio Stuttgart turned over to German management on 6-30-49. United States radio officers to continue liaison with stations only as consultants and observers. XXI, 83 et seq. (7-25-49).

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Third Currency Reform Law in Germany announced 6-26-48 setting rates for exchange of old money for new, as well as prescribing procedures re old debts, contracts, wage scales under new currency. (2nd Currency Reform Law did not affect public; merely authorized bank to issue currency.) XIX, 141 (8-1-48).

Interim Office for German affairs established within Department of State to carry out provisions of Public Law 798 of 80th Congress authorizing Department to perform consular functions for German Nationals in United States. XIX, 279 (8-29-48).

United States Zone of Control Law No. 75 issued covering reorganization of German coal, iron and steel industries, effective 11-10-48. XIX, 703 et seq. (12-5-48).

Municipal elections held in Berlin 12-5-48 and participated in by overwhelming majority of population in Western Sector. XIX, 776 (12-19-48).

Supreme Commander for Allied Powers to direct Japanese Government to carry out effectual economic stabilization program with a view to achieving fiscal monetary price and wage stability in Japan. XX, 60 (1-9-49).

Bank of the German States established March 1948 under MG Law No. 60. XX, 126 et seq. (1-30-49).

Military Security Board for Western Zone of Germany established by United States, United Kingdom, and France—1-17-49. XX, 194 et seq. (2-13-49).

United States, United Kingdom, and France reach agreement on various questions relating to Germany 4-8-49, including

(1) Text of occupation statute in new and simpler form.
(2) Basic principles governing Tri-Partite control and occupation.
(3) Plant dismantling.

(4) Prohibited and restricted industries.
(5) Powers, etc. of newly established German Federal Republic.
(6) Establishment of International Ruhr Authority. XX, 499 (4-17-49).

Absentee owned property will be released 5-15-49 to former custodians who managed it at time it was taken into custody by Military Government—announcement made 3-26-49. Involves nearly 8,000 with a total value of RM 70,000,000. XX, 501 (4-17-49).

United States, United Kingdom, and France announce text of agreement on 4-13-49 on limitations to be placed on certain industries in Germany. Agreement is coordinated with that on reparation program. XX, 526 et seq. (4-24-49).

United States, United Kingdom, and France reached agreement 4-13-49 on German reparation program. Revised list of capital equipment to be removed from Western Germany as reparations resulting in certain equipment of 159 plants previously scheduled for dismantling are to remain as they will contribute effectively to coordinated economy of countries participating in EPR. Plants include 32 steel, 88 metal working, 32 chemical, and 7 non-ferrous metals industry. XX, 524 et seq. (4-24-49).

United States, United Kingdom, and France announce agreement on 4-26-49 of basic principles of merger of 3 Western German Zones of occupation. Allied High Commission composed of High Commissioner from each occupying power to constitute supreme allied control to become effective at time of establishment of provisional German Government. XX, 589 (5-8-49).

Agreement completed between United States, United Kingdom, France, and USSR re lifting restrictions between zones of occupation on communications, transportation and trade on 5-4-49. XX, 631 (5-15-49).

Department of State recommends to Far Eastern Commission that Japan be permitted to at-

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tend international meetings and conventions, and to adhere to and participate therein. XX, 635 (5-15-49).

As of 6-21-49—foreign visitors in Germany must live on German economy and pay all expenses in Deutsche marks—receiving currency control books for that purpose. XX, 807 (6-26-49).

Federal Republic of Germany established 9-21-49. OMGUS terminated 9-21-49—Office of United States High Commissioner established 6-6-49 becomes effective. Marks change from military to civilian control of Germany. John H. McCloy, former President of International Bank for Reconstruction and Development named High Commissioner. XXI, 512-3 (10-3-49).

II. International Political Transitions.

1. *Major defense treaties.*

Ratification of Peace Treaties with Hungary, Rumania, Bulgaria and Italy. XVI, 1214 (6-22-47).

Trustee Agreement for the Trust territory of the Pacific Islands approved by joint resolution of Congress (Public Law 204, 80th Congress) and formally approved by President 7-18-47. XVII, 420 (8-31-47).

Inter-American Treaty of reciprocal assistance signed at Petropolis 9-2-47. XVII, 565 et seq. (9-21-47).

Greek Government ratifies treaty of peace with Italy. XVII, 1058 (11-30-47).

North Atlantic Treaty signed by United States and 11 nations in Washington 4-4-49, ratified by Senate 82-13 on 7-11-49. XX, 471 et seq. (4-17-49) and XXI, 148 (8-1-49).

Joint United States-Canada Industrial Mobilization Committee established 4-12-49—function to exchange information and coordinate views of 2 Governments in event of emergency especially in planning for Industrial Mobilization. XX, 537 (4-24-49).

Ratification of International Wheat Agreement signed by Pres. Truman 6-17-49—effective for 4 years—United States and Canada as 2 of 5 exporting countries account for 80% of guaranteed sales. XXI, 21 (7-4-49).

Mutual Defense Assistance Act of 1949 signed 10-6-49. XXI, 603 (10-24-49).

2. *Military, Naval and Air Commissions.*

Military Advisory Mission Agreement between United States and Brazil signed 7-29-48; effective for 4 years renewable at option of Brazil. XIX, 211-12 (8-15-48).

Military Advisory Mission Agreement signed 10-6-48 by United States and Argentina—continues in force 4 years, renewable at option of Argentina. XIX, 494 (10-17-48).

Air Force Mission Agreement with Haiti signed to be in force 4 years with option to renew at request of Haiti—1-4-49. XX, 87 (1-16-49).

Military Mission Agreement signed with Colombia 2-21-49 to be in force for 4 years with option to renew at request of Colombia. XX, 303 (3-6-49).

Naval Commission Agreement with Haiti signed by U. S. 4-14-49—in force 4 years, renewable at option of Haiti. XX, 637 (5-15-49).

Military Mission Agreement between Peru and United States signed 6-20-49. Effective for four years and to be renewed at option of Peruvian Government. XX,.... (.....).

3. *Recognition of post-war Governments.*

Special United States Diplomatic Mission to Nepal to conclude agreement of commerce and friendship and arrange for exchange of diplomatic and consular representatives. XXI, 598 (3-30-47).

First Constituent Assembly of Pakistan convenes at Karachi. XVII, 336 (8-17-47).

Recognition accorded Government of Republic of Korea (elected 5-10-48) as Government en-

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visaged by General Assembly resolutions of 11-14-47 and special envoy with rank of Ambassador named. XIX, 242 (8-22-48).

United States recognizes Government of Republic of Korea—1-1-49. XIX, 59-60 (1-9-49).

Credit of 35 Million Dollars extended by Export-Import Bank 1-19-49 to State of Israel to purchase equipment and services for execution of agricultural projects. 65 Million Dollars earmarked to be available for additional loans for projects in communications, transportation, manufacturing, housing and public works. XX, 173 (2-6-49).

DeJure recognition extended by United States to Transjordan and Israel 1-31-49. XX, 205 (2-13-49).

United States grants recognition to New Syrian Government XX, 637 (5-15-49).

United States recognizes New Syrian Government on 9-20-49. XXI, 515, (10-3-49).

III. International Economic and Social Transitions.

1. *Developments in Trade and Tariff.*

Agreement reached on United States-Swedish import matters. XVII, 42 (7-6-47).

General agreement on tariffs and trades executed on October 30, 1947 by 23 countries including United States, supplemented by exclusive agreement with China and Cuba. XVII, 1005 (11-23-47) and XVIII, 28 (1-4-48).

Treaty of friendship, commerce, and navigation with Italy signed in Rome 2-2-48. XVIII, 219 (2-15-48).

General agreement on tariffs and trade with Czechoslovakia proclaimed 4-22-48, effective 4-21-48. 13 Fed. Reg 2211.

General agreement on tariffs and trade with China proclaimed 5-4-48. (Proclamation 2769-13 Fed. Reg. 467.)

Proclamation issued on general agreement on tariffs and trade with Union of South Africa and

Cuba, proclamation 2791, 13 Fed. Reg. 3372, proclamation 2790, 13 Fed. Reg. 3269.

Proclamation on general agreement on tariffs and trade with India, Norway and Southern Rhodesia. (1st trade agreement in force between United States and above countries.) XIX, 55 (7-11-48).

Proclamation on general agreement on tariffs and trade with Brazil, Burma, Ceylon, New Zealand, Pakistan, Syria and Lebanon. Proclamation 2798-13 Fed. Reg. 4057.

Revised procedures for administration of reciprocal trade agreements program of Trade Agreements Act of 1934 as amended issued by President October 5, 1948. Executive Order 10,004-13 Fed. Reg. 5851.

Economic Cooperation Agreement with Korea signed 12-10-48. XIX, 778 (12-19-48).

Chile signs general agreement on tariffs and trade 2-14-49 and on 3-8-49 by proclamation. United States makes certain concessions to Chile re reductions in tariffs on certain fresh fruits, melons, dried beans, onions; reduction in import taxes on copper-bearing ores and concentrates and copper articles; and duty free treatment for copper and copper ores, crude iodine and nitrate of soda. XX, 363-4 (3-20-49).

2. *Developments in communications.*

International Postal Service order of Acting Postmaster General. Restricted resumption of international mail service to all of Germany. 12 Fed. Reg. 706 (1-31-47).

Postal charges established for service between United States and Ankara, Turkey, United States and Sydney, Australia of foreign countries mail on United States air carriers. Restricted resumption of mail service to all of Germany and of non-commercial printed matter weighing up to 4 lbs. 6 ozs. to United States and British Zone of Germany (excluding Berlin) service to Austria resumed. 12 Fed. Reg. 1604 (3-8-47).

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Direct radiotelegraph service between America and Greece opened. (Formerly routed through London). XVII, 142 (7-20-47).

Radiotelegraph Circuit opened between Rome and New York on 10-29-47. XVII, 911 (11-9-47).

International telegraph service authorized between Germany and rest of world (except Spain and Japan and their dependencies) subject to certain military regulations. XVII, 1191 (12-14-47.)

International telecommunication convention, final protocol and radio regulations annexed thereto ratified by President on 6-18-48. XVIII, 841 (6-27-48).

Radiotelegraph direct service with Saudi-Arabia opened 9-16-48. XIX, 449 (10-3-48).

3. *Developments in Aviation.*

Air Transport Agreement (Bermuda type) signed by United States with Bolivia 9-30-48. XIX, 470 (10-10-48).

Air Transport Agreement with Bolivia signed 9-29-48. XX, 62 (1-9-49).

Air Transport Agreement signed by United States and Finland on March 29, 1949. XX, 466 (4-10-49).

Air Transport Agreement signed between United States and Panama on March 31, 1949. XX, 466 (4-10-49).

Air Transport Agreement to replace 1945 one signed between Canada and United States on 6-4-49. Agreement follows Bermuda type. XX, 766 (6-12-49).

Air Transport Agreement with Dominican Republic signed by United States on 7-19-49. Agreement follows Bermuda type. XXI, 153 (8-1-49).

Air Transport Agreement with Burma signed by United States 9-27-49. (Makes 41st bilateral agreement concluded by United States—follows Bermuda type pattern). XXI, 558 (10-10-49).

4. *Developments in Taxation—Miscellaneous.*

Convention executed October 18, 1946, between United States and France for avoidance of double taxation. XVI, 174 et seq. (1-26-47).

Estate tax convention with South Africa signed (similar to ones between United States and United Kingdom and United States and Canada) signed 4-10-47. XVI, 716 (4-20-47).

Income tax convention with New Zealand signed 3-16-48. XVIII, 486 (4-11-48).

Income tax convention with Netherlands signed 4-29-48. XVIII, 611 (5-9-48).

Income tax convention with Denmark signed 5-6-48. XVIII, 653 (5-16-48).

Ratification of convention between United States and France and protocol thereto modifying same with respect to double taxation signed by President 6-18-48. XVIII, 841 (6-27-48).

Double taxation convention with Belgium signed 10-28-48. XIX, 585 (11-7-48).

Double taxation convention with Denmark and Netherlands ratified December 1, 1948. XIX, 738 (12-12-48).

Extension of double taxation convention with United Kingdom to 20 territories of British Government expected. XX, 207 (2-27-49).

Two tax conventions with Norway signed by United States on 6-13-49 for avoidance of double taxation with respect to income taxes and estate taxes. XX, 830 (6-26-49).

Two tax conventions signed between United States and Ireland in Dublin 9-13-49, for avoidance of double taxation with respect to income taxes and estate taxes.

5. *International Conferences.*

First Congress of International Theatre Institute (20 countries represented) held at Praha, Czechoslovakia 6-28–7-3-1948. See report thereon by Rosamond Gilder. XIX, 488-9 (10-17-48).

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Joint declaration of United States and French Republic Governments issued 9-16-48 re distribution and exhibition of American films and modification of previous understanding of 5-28-46. XIX, 500-1 (10-17-48).

Protocol to bring under international control drugs outside Geneva Convention of 7-13-41 and limiting manufacturing and distribution thereof sent by President to Senate for ratification. XX, 330 (3-13-49).

6. *Expansion of Educational Exchange Commitments.*

Establishment of Foreign Service Institute in Department of State. Purpose to improve skills, broaden understanding, and develop abilities of Foreign Service and Department personnel and other Federal employees requiring instruction in field of foreign relations, by furnishing extensive and systematic training, and by promoting and fostering programs of study incidental to such training. 12 Fed. Reg. 1545 (3-7-47).

First large scale exchange of students and teachers between United States and Europe begun 6-6-47; 2 ships each capable of carrying 925 passengers will make 4 round trips. XVI, 1133 et seq. (6-8-47).

President appoints Special Board to select American students for study abroad under Fulbright Act; 22 countries eligible to participate—amount involved $137,550,000. XVII, 198-199 (7-27-47).

Educational and Vocational Training Institute scheduled as part of American program to accelerate rehabilitation of South Korea. XVII, 231 (8-3-47).

Agreement with China to implement Education Exchange Act signed in Nanking 11-10-47 under which United States Educational Foundation in China established. XVII, 1005-6 (11-23-47).

Agreement with Burma signed putting into operation international exchange under Fulbright

Act, and establishes United States Educational Foundation in Burma. XVIII, 27-8 (1-4-48).

Educational Exchange Program Agreement signed with the Philippines 3-24-48. XVIII, 488 (4-11-48).

Agreement with Greece signed putting into operation the program of international educational exchanges under Fulbright Act 4-24-48. XVIII, 654 (5-16-48).

Surplus Property Agreements on Educational Exchange (under Fulbright Act) with United Kingdom and New Zealand signed 9-22-48 and 9-13-48 respectively. XIX, 473 (10-10-48).

Belgium, Luxembourg and United States sign agreement 10-8-48 under Fulbright Act to put into operation program for educational exchanges. XIX, 528 (10-24-48).

Surplus property agreement on educational exchange with France under Fulbright Act signed 10-2-48. XIX, 650 (11-21-48).

Educational Exchange Agreement under Fulbright Act signed 12-18-48 by Italy and United States. XIX, 809 (12-26-48).

Educational Exchange Agreement signed between United States and Netherlands 5-17-48. XX, 698 (5-29-49).

United States Educational Commission established in France to take responsibility of annual expenditures of $1,000,000 in francs under Fulbright Act. XXI, 263 (8-22-49).

United States signed Educational Exchange Agreement with Iran under Fulbright Act—9-1-49. XXI, 443 (9-19-49).

7. *Encouragement of International Travel.*

Order of Dean Acheson, Acting Secretary of State revoking certain requirements of entry for alien seamen. 12 Fed. Reg. 119 (1-8-47).

Restrictions lifted for pleasure travel to Europe. XVI, 342 (2-23-47).

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Regulations relaxed with respect to American Tourist travel in Austria (except Vienna); not applicable to travel in Austria for personal or business matters. XVII, 45 (7-6-47).

Discussions with interested groups initiated by United States on convention for foreign motor travel to permit motorists to drive in foreign countries. XIX, 446 (10-3-48).

Relaxation of visa restrictions by United States and Belgium as of 10-15-48. XIX, 526 (10-24-48).

As of 10-5-48 visas no longer required for American tourists in Italy and as of 11-1-48 none required for either American business or pleasure travelers; reciprocal provisions made for Italian visitors to United States, subject to statutory limitations. XIX, 526 (10-24-48).

Emigration Regulations for men of military age from United States Zones of Germany and Austria to Israel relaxed. XIX, 386-7 (9-19-48).

Visa requirements for United States citizens with valid passports to United Kingdom for temporary stay waived; reciprocal provision for United Kingdom citizens with valid British passports. XIX, 648 (11-21-48).

Relaxation of nonimmigrant passport visa requirements agreed on between France and United States. No French visa required by bearers of American passports and reciprocal relaxations in accordance with United States statutory restrictions granted bearers of French passports in United States. XX, 457 (4-10-49).

Ireland lifts visa requirements to encourage travel and becomes 11th Marshall Plan Country to facilitate international travel in this way. XXI, 314 (8-29-49).

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949

No. 334

UNITED STATES OF AMERICA,
Appellant,

vs.

SHORELINE COOPERATIVE APARTMENTS, INC., A CORPORATION; J. M. NICHOLSON; ROBERT R. LUMSDEN; NATHAN SUCHERMAN; MILTON TIRSLEY; FRANK FERRARO; HELEN FERRARO; JOHN J. CHALMERS; SAMUEL SILVERMAN; ARTHUR J. CASEY; MAURICE LIPKIN; CHARLES E. KOCH; CHARLES H. BRANDT; CLIFFORD CULLODEN; JEROME A. CUTLER; HARRY TARLER; EUGENE B. FEINGOLD; HERBERT S. KOHN AND IRVING KALLICK,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

PETITION OF APPELLEES ROBERT R. LUMSDEN, ARTHUR J. CASEY, CLIFFORD CULLODEN AND IRVING KALLICK, FOR REHEARING.

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To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Appellees respectfully apply to this Court, pursuant to Rule 33 of the Revised Rules of this Court, for a rehearing of the decision of this Court, and show in support thereof as follows:

No opinion was filed by the Court in this matter, nor any announcement made that an opinion would be filed. The reasons for the decision must be implied from the citation in the order of *Wood* v. *Miller Co.*, 333 U. S. 138, in which opinion this Court rejected certain grounds urged against the validity of the Housing and Renting Act of 1947.

It is submitted that this Court has misunderstood the grounds urged against the validity of the Housing and Renting Act of 1949, since most of them were not urged and could not have been urged against the validity of the Act of 1947.

The ground upon which the District Court invalidated the Act of 1949 was that Section 204 (j), the so-called "local option" provision, thereof was unconstitutional. This provision was not a part of the Act of 1947, either in its present form or any other form.

Nor can *Woods* v. *Miller Co., supra,* be applied to this section even by remote analogy. In that case the delegation was to a federal officer under federal control, and not to state agencies. Also in that case, there was no "unbridled" delegation of discretion as in the instant case. In the *Woods* case, the Court said (333 U. S. 138, 144):

> Under the present Act the Housing Expediter is authorized to remove the rent controls in any defense-rental area *if in his judgment the need no longer exists by reason of new construction or satisfaction of demand in other ways.* (Italics supplied.) The powers thus delegated are far less extensive than those sus-

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tained in *Bowles* v. *Willingham* (321 U. S. 503). Nor is there here a grant of unbridled administrative discretion. The standards prescribed passed muster under our decisions.

Likewise Section 209 of the 1949 Act, conferring upon the Housing Expediter the power to control evictions, was not a part of the 1947 Act; nor were the provisions of Section 202 (c) (1) of the Act of 1949, recontrolling apartment hotels in cities of 2,500,000 population, but not others in the same defense rental areas, or those in other areas (Appellee's brief, pp. 66 *et seq.*).

Although the Court did in *Woods* v. *Miller, supra,* determine that the war emergency had not terminated as of February 26, 1948 (the date of the opinion), it indicated in that opinion, as it has indicated consistently in other decisions, that it was not the intention of the Court to preclude further examination from time to time of the continuance of the emergency. Obviously a decision of the Court with reference to the continuance of an emergency can control only the situation then existing, since by their nature emergency conditions are not static, but necessarily involve a time element.

The argument of appellees that the 1949 Act is invalid because it denies the owner of rental property a fair return can hardly be said to be controlled by the decision in *Woods* v. *Miller, supra,* since the analogy of the public utility cases was not urged upon the Court in that case, or in any of the preceding cases, and in view of the further fact that the Act of 1949 enunciates for the first time the so-called "fair net operating income" mandate, which is the gist of this objection of appellees. (Appellees' brief, pp. 56 *et seq.*) In this respect, attention is invited also to the inapplicability of *Bowles* v. *Willingham,* 321 U. S. 515, 516, which

dealt with a static, frozen economy, in which, as the Court indicated, the intention was to deal with rentals on a "mass" basis, as distinguished from the provisions of the Act of 1949 dealing with individual rentals in an economy free except as to rentals.

The decision in *Woods* v. *Miller Co., supra,* likewise cannot be controlling (Appellees' brief, pp. 63 *et seq.*) with reference to the fact that the 1949 Act neither allows hearing nor judicial review. That argument was not raised in *Woods* v. *Miller, supra,* and was not applicable to the 1947 Act to the same degree that it is to the 1949 Act, in view of the inclusion of the latter of Section 206 (g).

Hence it is respectfully submitted that certain of the objections raised in the instant case cannot in any sense be controlled by *Woods* v. *Miller, supra,* and that certain other objections, in the form in which they exist under the 1949 Act, cannot be said to be fairly controlled by that decision.

The soundness of this conclusion is further illustrated by reference to the facts of the instant case. The present complaint was instituted for the purpose of enjoining appellees, owners of co-operative apartments, from seeking possession thereof for their own use, and is predicated upon the provisions of the 1949 Act. If the 1947 Act (to which alone *Woods* v. *Miller, supra,* applies) had still been in effect, this case could never have arisen, since under that Act, these appellees were clearly entitled to secure possession for their own use.

Appellees are of course placed in the position of attempting to guess what reasons lead the Court to make the present decision. Counsel recall two questions raised in oral argument by members of the Court which may conceivably indicate the basis of the Court's reasoning: (1) The fact that by its own terms the 1949 Act terminates in

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June of 1950; and (2) the implication that it is undesirable to compel tenants to return to the "unsatisfactory" housing accommodations which they occupied in 1940.

With respect to the termination of the Act in June of 1950, the attention of the Court is again urgently invited to the fact that the 1947 and 1948 acts likewise provided for automatic termination; and to the further fact that administration leaders, including the President himself in his forthcoming message on the State of the Union, are already clamoring for further extension of rent controls. With respect to the suggestion that it is undesirable to compel tenants to return to the "unsatisfactory" accommodations which they occupied in 1940, the answer would seem obvious. If the Government desires to improve the housing accommodations of tenants beyond what they are able to provide by their own efforts and resources, it should do so from general revenues, by direct or indirect subsidy, as has been done with the farmers and other segments of the economy, and not at the expense of the landlords alone. The present practice constitutes nothing more nor less than the expropriation of money from one class of persons for the benefit of another; and it is respectfully submitted that such a system constitutes confiscation of property and cannot by any rationalization of constitutional principals be brought into conformity with the due process requirements of the Fifth Amendment.

Attention is also respectfully invited to the fact that the order of the Court in the instant case, filed as it is without opinion, leaves not only the status of the present litigation, but the status of innumerable other pending cases involving various constitutional objections to the Rent Act, in a confused and unsatisfactory condition. The instant case is reversed, and it may be that the mandate to be issued by this Court will furnish sufficient instructions to guide the

District Court in disposing of the matter. It seems improbable, however, that such mandate will furnish adequate guidance for the disposition of other cases pending before single judge and three-judge District Courts. In the District Court for the Northern District of Illinois, Eastern Division, for example, there is now pending before a three-judge court the case of *Dixon Company et al.* v. *Shogren et al.*, Gen. No. 49-C-1090, in which are involved most of the issues presented in the instant case. Nor does the instant order clarify the status of the Housing and Rent Act of 1949 in various states which have availed themselves of the provisions of Section 204 (j). Since *Woods* v. *Miller Co., supra,* could make no reference to this section, there is no way of knowing, in the absence of an opinion, whether the Court has found Section 204 (j) unconstitutional but separable, or whether the Court has found that section valid; and, hence, impossible to know whether Texas, Wisconsin and certain other states are or are not controlled.

The rights and every day affairs of millions of tenants and property owners, both large and small, are dependent upon the determination of the Court in the instant case, and it is submitted that those rights remain confused and undetermined on the present state of the record in the instant case.

Appellees desire to suggest to the Court a further consideration. The effect of the present decision would seem to be to continue to hold in bondage the private property of millions of small landlords who have invested in those properties their life savings, and who have regarded those properties as their means of sustenance in old age. It would seem that a due consideration for these people would indicate a clear and full expression by the Court of the reasons which impel the Court to take the action here taken.

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WHEREFORE appellees respectfully urge that they be granted a rehearing; that the decision of the District Court be, upon further consideration, sustained; or that in the alternative the Court file an opinion clarifying the decision reached.

Respectfully submitted,

KENART M. RAHN,
GEORGE S. STANSELL,
Counsel for Certain Appellees.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

I, George S. Stansell, counsel for certain appellees, certify that the foregoing petition is presented in good faith, is true and correct, and is not filed for delay.

GEORGE S. STANSELL.

Per Curiam Decisions.

No. 334. UNITED STATES *v.* SHORELINE COOPERATIVE APARTMENTS, INC. ET AL. Appeal from the United States District Court for the Northern District of Illinois. Argued December 7, 1949. Decided December 12, 1949. *Per Curiam:* The judgment is reversed. *Woods* v. *Miller Co.*, 333 U. S. 138. *Solicitor General Perlman* argued the cause for the United States. With him on the brief were *Robert L. Stern, Ed Dupree, Hugo V. Prucha* and *Nathan Siegel. Mayer Goldberg* and *George S. Stansell* argued the cause for appellees. *Mr. Goldberg* also filed a brief for the Shoreline Cooperative Apartments, Inc. et al., appellees. *Kenart M. Rahn* was with *Mr. Stansell* on the brief for Lumsden et al., appellees. Reported below: 84 F. Supp. 660.